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ORIGINAL 3533

VOLUME 1

(Pages 5 to 476 Folios 3 to 1416)

L. A. No. 6567

In the Supreme Court

OF THE

State of California.

County of Los Angeles,
Plaintiff and Respondent,
vs.
Rindge Company, a Corporation, et al.,
Defendants and Appellants.

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES CO.
HON. PAUL J. MC CORMICK, JUDGE.

TRANSCRIPT ON APPEAL.

ANDERSON & ANDERSON,
Black Building, 4th and Hill Sts., Los Angeles,
NATHAN NEWBY,
Washington Bldg., 3rd and Spring, Los Angeles,
Attorneys for Defendants and Appellants.

A. J. HILL, *County Counsel;*
PAUL VALLEE, *Deputy County Counsel;*
Hall of Records, Los Angeles, Cal.
Attorneys for Plaintiff and Respondent.

Filed June 11, 1920, B. Grant Taylor, clerk; by ——— deputy.

STATE OF CALIFORNIA
DISTRICT COURT OF APPEAL
SECOND APPELLATE DISTRICT.
Filed March 7, 1921. ——— clerk; by ——— deputy.

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No. B 43572.

In the Superior Court

OF THE

State of California,

IN AND FOR THE COUNTY OF LOS ANGELES.

County of Los Angeles,

Plaintiff,

vs.

Rindge Company, a Corporation; May K. Rindge, a Widow; Samuel K. Rindge, Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Her Husband; Hueneme, Malibu and Southern Railway, a Corporation; Hueneme, Malibu and Port Los Angeles Railway, a Corporation; Henry W. Keller, The Pacific Mutual Life Insurance Company, a Corporation; The Pacific Mutual Life Insurance Company of California, a Corporation; John One, John Two, John Three, John Four, John Five, Mary One, Mary Two, Mary Three, Mary Four, Mary Five,

Defendants.

3

COMPLAINT.

The county of Los Angeles, plaintiff in the above entitled action, complains of the defendants herein and alleges:

I.

That said county of Los Angeles is now and was at all the times herein mentioned a body politic and a political subdivision of the state of California.

That said Rindge Company is and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the state of California.

That said Pacific Mutual Life Insurance Company is and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the state of California.

That said Pacific Mutual Life Insurance Company of California is and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the state of California.

That the Hueneme, Malibu and Southern Railway is and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the state of California.

That the Hueneme, Malibu and Port Los Angeles Railway is and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the state of California.

That Rhoda Rindge Adamson and Merritt H. Adamson are husband and wife.

II.

That the board of supervisors of the county of Los Angeles, at a meeting thereof held on the 26th day of August, 1916, by a two-thirds vote of all the members, duly passed a resolution declaring it to be a public necessity to condemn certain lands for public purposes, and authorizing and directing the county counsel of the county of Los Angeles to institute proceedings for the condemnation of said certain lands, for a public use, namely: for public highway purposes in the county of Los Angeles, state of California, and describing the said improvement and the land necessary or convenient to be taken therefor, which said resolution is in words and figures as follows, to-wit: [Words in brackets amended by order of court, Jan. 8, 1917, Geo. B. W., deputy.]

"*In re* Malibu Road, Road District No. 4.

Resolution authorizing condemnation proceedings.

On motion of Supervisor Hinshaw, duly seconded and unanimously carried, it is ordered that the following resolution be and the same is hereby adopted.

Whereas, the public necessity and interest of the people of the county of Los Angeles do require that a certain highway be constructed in

said county over and across those certain parcels of real property hereinafter described, and for that purpose and for such public use it is necessary that those certain pieces or parcels of real property hereinafter described be acquired by said county by condemnation namely: the following described property located in the county of Los Angeles, state of California, to-wit:

(Description.)

Also the following described parcels of land, being in division 1 of said Malibu Road as shown on said county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county.

Parcel No. 1.
(Description.)

Parcel No. 2.
(Description.)

Parcel No. 3.
(Description.)

Parcel No. 4.
(Description.)

Parcel No. 5.
(Description.)

Parcel No. 6.
(Description.)

Parcel No. 7.
(Description.)

Parcel No. 8.
(Description.)

Parcel No. 9.
(Description.)

Parcel No. 10.
(Description.)

Parcel No. 11.
(Description.)

Parcel No. 12.
(Description.)

Parcel No. 13.
(Description.)

Parcel No. 14.
(Description.)

Parcel No. 15.
(Description.)

Parcel No. 16.
(Description.)

Parcel No. 17.
(Description.)

Parcel No. 18.
(Description.)

Parcel No. 19.
(Description.)

Parcel No. 20.
(Description.)

Parcel No. 21.
(Description.)

16 Parcel No. 22.
(Description.)

Parcel No. 23.
(Description.)

Parcel No. 24.
(Description.)

Parcel No. 25.
(Description.)

Parcel No. 26.
17 (Description.)

Parcel No. 27.
(Description.)

Parcel No. 28.
(Description.)

Parcel No. 29.
(Description.)

Parcel No. 30.
(Description.)

18 Parcel No. 31.
(Description.)

Parcel No. 32.
(Description.)

Parcel No. 33.
(Description.)

Parcel No. 34.
(Description.)

Parcel No. 35.
(Description.)

19 Also the following described parcels of land, being in division 1 and division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 36.
(Description.)

Parcel No. 37.
(Description.)

Also the following described parcels of land,
20 being in division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 38.
(Description.)

Parcel No. 39.
(Description.)

Parcel No. 40.
(Description.)

21 Parcel No. 41.
(Description.)

Parcel No. 42.
(Description.)

Parcel No. 43.
(Description.)

Parcel No. 44.
(Description.)

Parcel No. 45.
(Description.)

Parcel No. 46.
(Description.)

Also the following described parcels of land, being in division 3, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 47.
(Description.)

Parcel No. 48.
(Description.)

Parcel No. 49.
(Description.)

Parcel No. 50.
(Description.)

Parcel No. 51.
(Description.)

Parcel No. 52.
(Description.)

Parcel No. 53.
(Description.)

Parcel No. 54.
(Description.)

Parcel No. 55.
(Description.)

Parcel No. 56.
(Description.)

Parcel No. 57.
(Description.)

Parcel No. 58.
(Description.)

Parcel No. 59.
(Description.)

Parcel No. 60.
(Description.)

Parcel No. 61.
(Description.)

Parcel No. 62.
(Description.)

Parcel No. 63.
(Description.)

Parcel No. 64.
(Description.)

Parcel No. 65.
(Description.)

Parcel No. 66.
(Description.)

Parcel No. 67.
(Description.)

Also the following described parcels of land, being in division 4, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 68.
(Description.)

Parcel No. 69.
(Description.)

Parcel No. 70.
(Description.)

Parcel No. 71.
(Description.)

Parcel No. 72.
(Description.)

Parcel No. 73.
(Description.)

Parcel No. 74.
(Description.)

Parcel No. 75.
(Description.)

Parcel No. 76.
(Description.)

Parcel No. 77.
(Description.)

Parcel No. 78.
(Description.)

Also all the following described parcels of land, being in division 5, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 79.
(Description.)

Parcel No. 80.
(Description.)

Parcel No. 81.
(Description.)

Parcel No. 82.
(Description.)

Parcel No. 83.
(Description.)

Parcel No. 84.
(Description.)

Parcel No. 85.
(Description.)

Parcel No. 86.
(Description.)

Parcel No. 87.
(Description.)

Parcel No. 88.
(Description.)

Parcel No. 89.
(Description.)

Parcel No. 90.
(Description.)

Parcel No. 91.
(Description.)

Parcel No. 92.
(Description.)

Also all the following described parcels of land, being in division 6, Malibu road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 93.
(Description.)

Parcel No. 94.
(Description.)

Parcel No. 95.
(Description.)

Also all the following described parcels of land, being in division 7, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 96.
(Description.)

Parcel No. 97.
(Description.)

Parcel No. 98.
(Description.)

Parcel No. 98-A.
(Description.)

Parcel No. 99.
(Description.)

Parcel No. 100.
(Description.)

Parcel No. 101.
(Description.)

Parcel No. 102.
(Description.)

Parcel No. 103.
(Description.)

Parcel No. 104.
(Description.)

Parcel No. 105.
(Description.)

Parcel No. 106.
(Description.)

Parcel No. 107.
(Description.)

Parcel No. 108.
(Description.)

Parcel No. 109.
(Description.)

Parcel No. 110.
(Description.)

Parcel No. 111.
(Description.)

Parcel No. 112.
(Description.)

Parcel No. 113.
(Description.)

Parcel No. 114.
(Description.)

Parcel No. 115.
(Description.)

Parcel No. 116.
(Description.)

Parcel No. 117.
(Description.)

Parcel No. 118.
(Description.)

Parcel No. 119.
(Description.)

Parcel No. 120.
(Description.)

Parcel No. 121.
(Description.)

Parcel No. 122.
(Description.)

Parcel No. 123.
(Description.)

Parcel No. 124.
(Description.)

Parcel No. 125.
(Description.)

Parcel No. 126.
(Description.)

Parcel No. 127.
(Description.)

Parcel No. 128.
(Description.)

Parcel No. 129.
(Description.)

Parcel No. 130.
(Description.)

Parcel No. 131.
(Description.)

Parcel No. 132.
(Description.)

Parcel No. 133.
(Description.)

Parcel No. 134.
(Description.)

Parcel No. 135.
(Description.)

Parcel No. 136.
(Description.)

43 Also all the following described parcels of land, being in division 8, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 137.
(Description.)

Parcel No. 138.
(Description.)

Parcel No. 139.
44 (Description.)

Parcel No. 140.
(Description.)

Parcel No. 141.
(Description.)

Parcel No. 142.
(Description.)

Parcel No. 143.
(Description.)

45 Parcel No. 144.
(Description.)

Parcel No. 145.
(Description.)

Parcel No. 146.
(Description.)

excepting so much of said land as is now included within any public highway, alley or lane.

Further reference is hereby made to said county surveyor's map No. 8070, on which the

location of all parcels of land herein described is accurately shown.

Now, therefore, be it resolved, and it is the finding and determination of this board, that the public interest and necessity require the acquisition by the county of Los Angeles of those certain pieces or parcels of land hereinbefore described for a public purpose, namely, for public highway purposes, and for the construction and completion of a public highway thereover; and,

Be it futher resolved, that those certain pieces or parcels of land hereinabove described be condemned for a public purpose, namely, for a public highway and the construction and completion thereof, and the county counsel of the county of Los Angeles is hereby directed to institute proceedings in the Superior Court of the state of California in and for said county of Los Angeles for the condemnation of those certain pieces or parcels of real property hereinabove described for public highway purposes, and to take all steps necessary for the condemnation of said piece or parcels of land in the name of said county."

III.

That it is necessary for county purposes and the public interest, convenience and necessity require the acquisition of an easement in and over the properties hereinabove particularly de-

49 scribed for the establishment and maintenance of a public highway as prayed for herein.

VI.

That the lands in and over which it is necessary to acquire said easement are situate in the county of Los Angeles, state of California, and are those pieces and parcels of land more particularly described in the resolution hereinbefore referred to, and set forth in paragraph II herein.

That none of the property hereinbefore de-
50 scribed sought to be condemned herein has heretofore been appropriated to any public use.

That the public use is located by the taking of said lands in the manner which will be most compatible with the greatest public good and the least private injury.

V.

That the names of all the owners and claimants of the property sought to be condemned in
51 this action or any part thereof, so far as known to this plaintiff, are set forth in the title hereof.

VI.

1. That the lands described in paragraph II of this complaint embrace a parcel of land described as follows, to-wit:

A strip of land 40 feet wide, being a portion of the Rancho Topanga Malibu Sequit, as shown on map recorded in book No. 1, page 414 *et seq.* of patents, records of Los Angeles county, said strip being bounded easterly by the easterly line

of said rancho, and bounded westerly by the westerly line of that certain parcel of land described in deed recorded in deed book 766, page 221 *et seq.*, records of said county, and lying 20 feet on each side of the following described center line:

(Description.)

Reference is hereby made to county surveyor's map No. 8070, on which the location of the above described strip of land is accurately shown, said map being on file in the office of the surveyor of Los Angeles county.

Also the following described parcels of land, being in division 1 of said Malibu Road as shown on said county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 1.
(Description.)

Parcel No. 2.
(Description.)

Parcel No. 3.
(Description.)

Parcel No. 4.
(Description.)

Parcel No. 5.
(Description.)

Parcel No. 6.
(Description.)

55 Parcel No. 7.
(Description.)

Parcel No. 8.
(Description.)

Parcel No. 9.
(Description.)

Parcel No. 10.
(Description.)

Parcel No. 11.
(Description.)

56 Parcel No. 12.
(Description.)

Parcel No. 13.
(Description.)

Parcel No. 14.
(Description.)

Parcel No. 15.
(Description.)

Parcel No. 16.
57 (Description.)

Parcel No. 17.
(Description.)

Parcel No. 18.
(Description.)

Parcel No. 19.
(Description.)

Parcel No. 20.
(Description.)

Parcel No. 20-A.
(Description.)

58 That plaintiff is informed and believes and therefore alleges that the defendant, May K. Rindge, a widow, is the owner of the parcels of land last above described, sought to be condemned in this action, and that said parcels of land include only a part of an entire tract of land owned by said defendant, May K. Rindge, a widow, which said entire tract of land is described as follows, to-wit:

59 All that real property situated in the Rancho Topanga Malibu Siguet (also known as Topango Malibu Sequit), county of Los Angeles, state of California, described as follows:

(Description.)

That plaintiff is informed and believes and therefore alleges that the defendant, Henry W. Keller, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, under and

60 by virtue of a certain reservation of a right of way to pass and repass over and along a private road in said land, as per deed from said Henry W. Keller to said May K. Rindge, wife of Frederick H. Rindge, dated January 15, 1892, and recorded in book 766, at page 221 of deeds, records of Los Angeles county.

That plaintiff is informed and believes and therefore alleges that the defendant, Pacific Mutual Life Insurance Company of California, a corporation, has an interest in the parcel of

61 land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Pacific Mutual Life Insurance Company, a corporation, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, under
62 and by virtue of a certain mortgage, dated January 20, 1914, and recorded in book 3571, at page 59 of mortgages, records of Los Angeles county, to secure the payment of a note for $45,000; the time for the payment of which note is extended to January 20, 1917, by an agreement between said May K. Rindge, a widow, and said Pacific Mutual Life Insurance Company, a corporation, and is dated November 25, 1914, and
63 recorded in book 3731, at page 240 of mortgages, records of Los Angeles county.

That plaintiff is informed and believes and therefore alleges that the defendant, May K. Rindge, a widow, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Samuel K.

64 Rindge, has an interest in the parcel of land last above described, and in the portion therof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Rhoda Rindge Adamson, has an interest in the parcel of land last above described, and in the portion
65 thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Merritt H. Adamson, husband of the defendant, Rhoda Rindge Adamson, has an interest in the parcel of land last above decribed, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is
66 unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Samuel K. Rindge, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this acti[illegible] under and by virtue of a certain action now p[illegible]ding in the Superior Court of the state of California, entitled "Samuel K. Rindge, plaintiff, v. Rindge Company, a corporation, May K. Rindge, Frederick H. Rindge, Rhoda Rindge Adamson and

67 Merritt H. Adamson, her husband, defendants," which said action is numbered B41239, filed August 15, 1916, in the office of the clerk of the county of Los Angeles.

2. That the lands described in paragraph II of this complaint embrace parcels of land described as follows, to-wit:

A strip of land 40 feet wide, being a portion of the Rancho Topanga Malibu Sequit, as shown
68 on map recorded in Book 1, page 414, *et seq.*, of patents, records of Los Angeles county, said strip being bounded easterly by the westerly line of that certain parcel of land described in deed book 766, page 221 *et seq.*, records of said county, and bounded westerly by the westerly line of said Rancho Topanga Malibu Sequit, and lying 20 feet on each side of the following described center line:

(Description.)

69 Also the following described parcels of land being in division 1 of said Malibu Road, as shown on said county surveyor's map No. 8070, on file in the office of surveyor of Los Angeles county:

Parcel No. 21.
(Description.)

Parcel No. 21-A.
(Description.)

Parcel No. 22.
(Description.)

70 Parcel No. 23.
(Description.)

Parcel No. 24.
(Description.)

Parcel No. 25.
(Description.)

Parcel No. 26.
(Description.)

Parcel No. 27.
(Description.)

71 Parcel No. 28.
(Description.)

Parcel No. 29.
(Description.)

Parcel No. 30.
(Description.)

Parcel No. 31.
(Description.)

72 Parcel No. 32.
(Description.)

Parcel No. 33.
(Description.)

Parcel No. 34.
(Description.)

Parcel No. 35.
(Description.)

Also the following described parcels of land, being in division 1 and division 2, Malibu Road,

as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 36.
(Description.)

Parcel No. 37.
(Description.)

Also the following described parcels of land, being in division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 38.
(Description.)

Parcel No. 39.
(Description.)

Parcel No. 40.
(Description.)

Parcel No. 41.
(Description.)

Parcel No. 42.
(Description.)

Parcel No. 43.
(Description.)

Parcel No. 44.
(Description.)

Parcel No. 45.
(Description.)

Parcel No. 46.
(Description.)

76 Also the following described parcels of land, being in division 3, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 47.
(Description.)

Parcel No. 48.
(Description.)

Parcel No. 49.
77 (Description.)

Parcel No. 50.
(Description.)

Parcel No. 51.
(Description.)

Parcel No. 52.
(Description.)

Parcel No. 53.
(Description.)

78 Parcel No. 54.
(Description.)

Parcel No. 55.
(Description.)

Parcel No. 56.
(Description.)

Parcel No. 57.
(Description.)

Parcel No. 58.
(Description.)

79 Parcel No. 59.
(Description.)

Parcel No. 60.
(Description.)

Parcel No. 61.
(Description.)

Parcel No. 62.
(Description.)

Parcel No. 63.
80 (Description.)

Parcel No. 64.
(Description.)

Parcel No. 65.
(Description.)

Parcel No. 66.
(Description.)

Parcel No. 67.
(Description.)

81 Also the following described parcels of land, being in division 4, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 68.
(Description.)

Parcel No. 69.
(Description.)

Parcel No. 70.
(Description.)

82 Parcel No. 71.
(Description.)

Parcel No. 72.
(Description.)

Parcel No. 73.
(Description.)

Parcel No. 74.
(Description.)

Parcel No. 75.
83 (Description.)

Parcel No. 76.
(Description.)

Parcel No. 77.
(Description.)

Parcel No. 78.
(Description.)

Also all the following described parcels of land, being in division 5, Malibu Road, as shown
84 on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 79.
(Description.)

Parcel No. 80.
(Description.)

Parcel No. 81.
(Description.)

Parcel No. 82.
(Description.)

85 Parcel No. 83.
(Description.)

Parcel No. 84.
(Description.)

Parcel No. 85.
(Description.)

Parcel No. 86.
(Description.)

Parcel No. 87.
(Description.)

86 Parcel No. 88.
(Description.)

Parcel No. 89.
(Description.)

Parcel No. 90.
(Description.)

Parcel No. 91.
(Description.)

Parcel No. 92.
(Description.)

87 Also all the following described parcels of land, being in division 6, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 93.
(Description.)

Parcel No. 94.
(Description.)

Parcel No. 95.
(Description.)

88 Also all the following described parcels of land, being in division 7, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 96.
(Description.)

Parcel No. 97.
(Description.)

Parcel No. 98.
89 (Description.)

Parcel No. 98-A.
(Description.)

Parcel No. 99.
(Description.)

Parcel No. 100.
(Description.)

Parcel No. 101.
(Description.)

90 Parcel No. 102.
(Description.)

Parcel No. 103
(Description.)

Parcel No. 104.
(Description.)

Parcel No. 105.
(Description.)

Parcel No. 106.
(Description.)

91 Parcel No. 107.
(Description.)

Parcel No. 108.
(Description.)

Parcel No. 109.
(Description.)

Parcel No. 110.
(Description.)

Parcel No. 111.
92 (Description.)

Parcel No. 112.
(Description.)

Parcel No. 113.
(Description.)

Parcel No. 114.
(Description.)

Parcel No. 115.
(Description.)

93 Parcel No. 116.
(Description.)

Parcel No. 117.
(Description.)

Parcel No. 118.
(Description.)

Parcel No. 119.
(Description.)

Parcel No. 120.
(Description.)

94 Parcel No. 121.
(Description.)

Parcel No. 122.
(Description.)

Parcel No. 123.
(Description.)

Parcel No. 124.
(Description.)

Parcel No. 125.
95 (Description.)

Parcel No. 126.
(Description.)

Parcel No. 127.
(Description.)

Parcel No. 128.
(Description.)

Parcel No. 129.
(Description.)

96 Parcel No. 130.
(Description.)

Parcel No. 131.
(Description.)

Parcel No. 132.
(Description.)

Parcel No. 133.
(Description.)

Parcel No. 134.
(Description.)

97 Parcel No. 135.
(Description.)

Parcel No. 136.
(Description.)

Also all the following described parcels of land, being in division 8, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 137.
98 (Description.)

Parcel No. 138.
(Description.)

Parcel No. 139.
(Description.)

Parcel No. 140.
(Description.)

Parcel No. 141.
(Description.)

99 Parcel No. 142.
(Description.)

Parcel No. 143.
(Description.)

Parcel No. 144.
(Description.)

Parcel No. 145.
(Description.)

Parcel No. 146.
(Description.)

Further reference is hereby made to said county surveyor's map No. 8070, on which the location of all parcels of land herein described is accurately shown.

That plaintiff is informed and believes and therefore alleges that the defendant, Rindge Company, a corporation, is the owner of the parcels of land last above described, sought to be condemned in this action, and that said parcels of land include only a part of an entire tract of land owned by said defendant, Rindge Company, a corporation, which said entire tract of land is described as follows, to-wit:

All that piece or parcel of land containing 13,315.70 acres, and being designated upon the plate of public surveys as

Lot No. 37, T. 1 S., R. 17 west;
Lot No. 37, T. 1 S., R. 18 west;
Lot No. 37, T. 1 S., R. 19 west;
Lot No. 38, T. 1 S., R. 20 west;
Lot No. 37, T. 2 S., R. 17 west;
Lot No. 38, T. 2 S., R. 17 west;
Lot No. 37, T. 2 S., R. 18 west;
Lot No. 38, T. 2 S., R. 18 west;
Lot No. 37, T. 2 S., R. 19 west;

all of San Bernardino meridian.

That plaintiff is informed and believes and therefore alleges that the defendant, Henry W. Keller, has an interest in the parcel of land last above described, and in the portion thereof

103 sought to be condemned in this action, under and by virtue of a certain reservation of a right of way to pass and repass over and along a private road in said land, as per deed from said Henry W. Keller to said May K. Rindge, wife of Frederick H. Rindge, dated January 15th, 1892, and recorded in book 766, at page 221 of deeds, records of Los Angeles county.

That plaintiff is informed and believes and
104 therefore alleges that the defendant, Hueneme, Malibu and Port Los Angeles Railway, a corporation, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, under and by virtue of a certain perpetual right of way for construction and maintenance of a railway, dated October 6, 1903, and recorded in book 1898, at page 146 of deeds, and running between Frederick H. Rindge and May K.
105 Rindge, his wife, grantors, and Hueneme, Malibu and Port Los Angeles Railway, a corporation, grantees.

That plaintiff is informed and believes and therefore alleges that the defendant, Hueneme, Malibu and Southern Railway, a corporation, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, under and by virtue of a certain deed to a right of way for railway purposes only, dated February 2, 1916, and re-

corded in book 6216, at page 92 of deeds, records of Los Angeles county.

That plaintiff is informed and believes and therefore alleges that the defendant, Samuel K. Rindge, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, under and by virtue of a certain action now pending in the Superior Court of the state of California, entitled "Samuel K. Rindge, plaintiff, v. Rindge Company, a corporation, May K. Rindge, Frederick H. Rindge, Rhoda Rindge Adamson and Merritt H. Adamson, her husband, defendants," which said action is numbered B-41239, filed August 15, 1916, in the office of the clerk of the county of Los Angeles.

That plaintiff is informed and believes and therefore alleges that the defendant, May K. Rindge, a widow, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Samuel K. Rindge, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Rhoda Rindge Adamson, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

That plaintiff is informed and believes and therefore alleges that the defendant, Merritt H. Adamson, husband of the defendant, Rhoda Rindge Adamson, has an interest in the parcel of land last above described, and in the portion thereof sought to be condemned in this action, but that the nature or extent of said interest is unknown to this plaintiff.

VII.

That the parcels of land described in paragraph VI of this complaint, sought to be condemned herein, and being the lands described in paragraph II hereof, constitute all the lands sought to be condemned in this action.

VIII.

That the defendants, John One, John Two, John Three, John Four, John Five, Mary One, Mary Two, Mary Three, Mary Four and Mary Five, are sued and designated herein by fictitious names for the reason that their true names are unknown to this plaintiff, and that said plaintiff, upon ascertaining their said true name, will substitute the same for such fictitious names by

112 proper amendment; and that said defendants have or claim some interest or lien upon the lands in paragraph II of this complaint described, or in some part or parcel thereof; but the nature, character and extent of such claim, interest or lien is unknown to this plaintiff.

IX.

That the location, general route and termini of said use and said improvement hereinbefore
113 described, and all parcels of land sought to be condemned in this action are marked red and correctly delineated and shown upon the map thereof, hereto attached, and marked "Exhibit A," which said map is hereby referred to and made a part of this complaint.

That where any of said parcels of land so sought to be condemned constitute only a part of a larger parcel, such larger parcel is also correctly delineated and shown upon said map.

114 Wherefore, this plaintiff prays that the defendants be required by answer to set forth the nature and extent of their several estates or interests in the land or any parcel thereof sought to be condemned in this action, and that such several estates and interests may be determined and adjudicated in this action; that the value of each and every such separate estate or interest in said land or any parcel thereof, and the damage accruing to the respective owners of such separate estates or interests, by rea-

115 son of the condemnation thereof in the construction of the improvements in the manner proposed by the plaintiff, be ascertained and adjudged; that upon the payment to the said several defendants, or into court for them, of the several amounts so ascertained, the court make and enter a final judgment condemning the lands herein to the public use for the public improvement herein described, and for such further and other relief as to the court may seem meet in
116 the premises.

A. J. HILL,
County Counsel, and
CHARLES E. HAAS,
Deputy County Counsel,
Attorneys for Plaintiff.

State of California, County of Los Angeles—ss.

Charles E. Haas, being first duly sworn, deposes and says: That the plaintiff, the County of
117 Los Angeles, is a body politic and corporate, a legal subdivision of the state of California, and therefore is unable to verify the foregoing complaint, except through its officers; that he is a deputy county counsel of said plaintiff, County and an attorney for the plaintiff in the above entitled action, and that as such deputy county counsel he is an officer of said county, and verifies this complaint; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge,

118 except as to those matters stated upon information or belief, and as to those matters he believes it to be true.

CHARLES E. HAAS.

Subscribed and sworn to before me this 14 day of October, 1916.

H. J. LELANDE, *County Clerk.*
By EMILY W. WUSSOW, *Deputy.*

Endorsed: Filed Oct. 18, 1916. H. J. Lelande, clerk; by H. Moore, deputy.

119

[TITLE OF COURT AND CAUSE.]

Appearance of Certain Parties.

To H. J. Lelande, County Clerk and Clerk of the Above-Entitled Court :

You are hereby authorized and instructed to enter the appearances of the following named defendants in the above-entitled action, to-wit: Rindge Company, a corporation; May K. Rindge, Frederick H. Rindge, Rhoda Rindge
120 Adamson, Merritt H. Adamson, Hueneme, Malibu & Southern Railway, a corporation; Hueneme, Malibu & Port Los Angeles Railway, a corporation; the Pacific Mutual Life Insurance Company, a corporation, and the Pacific Mutual Life Insurance Company of California, a corporation.

Dated December 4th, 1916.

Respectfully,
ANDERSON & ANDERSON,
Attorneys for Said Defendants.

121 Endorsed: Filed Dec. 5, 1916. H. J. Lelande, clerk; by H. Brodek, deputy.

[TITLE OF COURT AND CAUSE.]

Demurrer of Defendant May K. Rindge to the Complaint.

Now comes May K. Rindge, one of the defendants in the above-entitled action, and demurring to the complaint of plaintiff therein for
122 grounds of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That the said complaint does not state facts sufficient to constitute a cause of action in that it fails to comply with Subd. 5 of Sec. 1244 of the Code of Civil Procedure, and does not con-
123 tain a description of each piece of land sought to be taken by the plaintiff.

III.

That said complaint is uncertain in this that it cannot be ascertained therefrom what parcels of land belonging to this defendant, or what parcels of land belonging to the defendant Rindge Company, or either, or how many of such parcels, are sought to be taken, and particularly in this:

124 (a)—That while in paragraph VI of said complaint, and commencing at line 6 of page 114 of said complaint, and ending at line 5 of page 118 of said complaint, there is a purported and attempted description of a single parcel of land alleged in said paragraph to belong to and be the property of this defendant, it appears from the map, Exhibit "A," annexed to said complaint, referred to in paragraph IX of said
125 complaint, and alleged to show "the location, general route and termini of said use and said improvement hereinbefore"—that is to say, in said complaint—"described, and all parcels of land sought to be condemned in this action, are marked red and correctly delineated" upon said map, marked "Exhibit A," that the said piece or parcel of land so purported to be described in paragraph VI of said complaint is divided into 40 parcels of land, 30 parcels of which only
126 are marked in red upon said map, and none of which is separately described in said complaint;

(b)—That while in paragraph VI of said complaint, and commencing at line 5 of page 134 of the complaint, and ending at line 13 of page 160 of said complaint, there is a purported and attempted description of a single parcel of land alleged in said paragraph to belong to and be the property of the defendant Rindge Company, a corporation, it appears from the said map, Exhibit "A," annexed to said complaint that the

said last mentioned piece or parcel of land so purported to be described in paragraph VI of said complaint is divided into 56 parcels of land, 28 parcels of which only are marked in red upon said map, and none of which is separately described in said complaint;

(c)—That, therefore, it is impossible to ascertain from said complaint whether it is the purpose and intent of the plaintiff therein to condemn each of said two above mentioned parcels of land so as aforesaid described in said paragraph VI of said complaint as a whole, or whether it is the intention of the plaintiff in said complaint to condemn the separate parcels into which said two parcels are divided and segregated upon said map, Exhibit "A," or a part and portion only of said separate parcels.

IV.

That said complaint is ambiguous in each and all and every of the particulars in which it is above alleged, set forth and specified that the same is uncertain, and in the further and other particular that the same is contradictory in this that the land hereinabove referred to as having been described in paragraph VI of said complaint is other and different from the land alleged in paragraph IX of said complaint to be shown upon said map as the land so sought to be condemned.

130 V.

That said complaint is unintelligible in each and all and every of the particulars in which it is above alleged, set forth and specified that the same is uncertain, and in each and all and every of the particulars in which it is above alleged, set forth and specified that it is ambiguous.

Wherefore, this defendant prays to be hence dismissed with her costs.

131 ANDERSON & ANDERSON,
Attorneys for Said Defendant May K. Rindge.

Endorsed: Received copy of the within demurrer this 5 day of Dec., 1916. A. J. Hill, county counsel; by C. E. Haas, dep., attorney for plaintiff.

Filed Dec. 5, 1916. H. J. Lelande, clerk; by H. Brodek, deputy.

[TITLE OF COURT AND CAUSE.]

132 **Demurrer of Defendants Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Hueneme, Malibu & So. Ry., a Corporation; Hueneme, Malibu & Port Los Angeles Ry., a Corporation; Pacific Mutual Life Insurance Co., a Corporation, and Pacific Mutual Life Insurance Co. of California, a Corporation, to Complaint.**

Now come Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Hue-

neme, Malibu & Southern Railway, a corporation; Hueneme, Malibu & Port Los Angeles Railway; a corporation; the Pacific Mutual Life Insurance Company, a corporation, and the Pacific Mutual Life Insurance Company of California, a corporation, defendants in the above-entitled action, and demurring to the complaint of plaintiff therein for grounds of demurrer say:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That the said complaint does not state facts sufficient to constitute a cause of action in that it fails to comply with Subd. 5 of Sec. 1244 of the Code of Civil Procedure, and does not contain a description of each piece of land sought to be taken by the plaintiff.

III.

That said complaint is uncertain in this that it cannot be ascertained therefrom what parcels of land belonging to the defendant May K. Rindge, or what parcels of land belonging to the defendant Rindge Company, or either, or how many of such parcels, are sought to be taken, and particularly in this:

(a)—That while in paragraph VI of said complaint, and commencing at line 6 of page 114 of said complaint, and ending at line 5 of

page 118 of said complaint, there is a purported and attempted description of a single parcel of land alleged in said paragraph to belong to and be the property of the defendant May K. Rindge, it appears from the map, Exhibit "A," annexed to said complaint, referred to in paragraph IX of said complaint, and alleged to show "the location, general route and termini of said use and said improvement hereinbefore"—that is to say, in said complaint—"described, and all parcels of land sought to be condemned in this action, are marked red and correctly delineated" upon said map, marked Exhibit "A," that the said piece or parcel of land so purported to be described in paragraph VI of said complaint is divided into 40 parcels of land, 30 parcels of which only are marked in red upon said map, and none of which is separately described in said complaint;

(b)—That while in paragraph VI of said complaint, and commencing at line 5 of page 134 of the complaint, and ending at line 13 of page 160 of said complaint, there is a purported and attempted description of a single parcel of land alleged in said paragraph to belong to and be the property of the defendant Rindge Company, a corporation, it appears from the said map, Exhibit "A," annexed to said complaint that the said last mentioned piece or parcel of land so purported to be described in paragraph VI of

said complaint is divided into 56 parcels of land, 28 parcels of which only are marked in red upon said map, and none of which is separately described in said complaint;

(c)—That, therefore, it is impossible to ascertain from said complaint whether it is the purpose and intent of the plaintiff therein to condemn each of said two above mentioned parcels of land so as aforesaid described in said paragraph VI of said complaint as a whole, or whether it is the intention of the plaintiff in said complaint to condemn the separate parcels into which said two parcels are divided and segregated upon said map, Exhibit "A," or a part and portion only of said separate parcels.

IV.

That said complaint is ambiguous in each and all and every of the particulars in which it is above alleged, set forth and specified that the same is uncertain, and in the further and other particular that the same is contradictory in this that the land hereinabove referred to as having been described in paragraph VI of said complaint is other and different from the land alleged in paragraph IX of said complaint to be shown upon said map as the land so sought to be condemned.

V.

That said complaint is unintelligible in each and all and every of the particulars in which it

142 is above alleged, set forth and specified that the same is uncertain, and in each and all and every of the particulars in which it is above alleged, set forth and specified that it is ambiguous.

Wherefore, said defendants pray to be hence dismissed with their costs.

ANDERSON & ANDERSON,
Attorneys for Said Defendants.

Endorsed: Received copy of the within de-
143 murrer this 5 day of Dec., 1916. A. J. Hill, county counsel; by C. E. Haas, dep., attorney for plaintiff.

Filed Dec. 5, 1916. H. J. Lelande, clerk; by H. Brodek, deputy.

[TITLE OF COURT AND CAUSE.]

Demurrer of Defendant Rindge Company, a Corporation, to Complaint.

144 Now comes the Rindge Company, a corporation, one of the defendants in the above-entitled action, and demurring to the complaint of plaintiff therein for grounds of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That the said complaint does not state facts sufficient to constitute a cause of action in that

145 it fails to comply with Subd. 5 of Sec. 1244 of the Code of Civil Procedure, and does not contain a description of each piece of land sought to be taken by the plaintiff.

III.

That said complaint is uncertain in this that it cannot be ascertained therefrom what parcels of land belonging to this defendant, or what parcels of land belonging to the defendant May K. Rindge, or either, or how many of such par-
146 cels, are sought to be taken, and particularly in this:

(a)—That while in paragraph VI of said complaint, and commencing at line 6 of page 114 of said complaint, and ending at line 5 of page 118 of said complaint, there is a purported and attempted description of a single parcel of land alleged in said paragraph to belong to and be the property of the defendant May K. Rindge,
147 it appears from the map, Exhibit "A," annexed to said complaint, referred to in paragraph IX of said complaint, and alleged to show "the location, general route and termini of said use and said improvement hereinbefore"—that is to say, in said complaint—"described, and all parcels of land sought to be condemned in this action, are marked red and correctly delineated" upon said map, marked "Exhibit A," that the said piece or parcel of land so purported to be described in paragraph VI of said complaint is

148 divided into 40 parcels of land, 30 parcels of which only are marked in red upon said map, and none of which is separately described in said complaint;

(b)—That while in paragraph VI of said complaint, and commencing at line 5 of page 134 of the complaint, and ending at line 13 of page 160 of said complaint, there is a purported and attempted description of a single parcel of land
149 alleged in said paragraph to belong to and be the property of this defendant Rindge Company, a corporation, it appears from the said map, Exhibit "A," annexed to said complaint that the said last mentioned piece or parcel of land so purported to be described in paragraph VI of said complaint is divided into 56 parcels of land, 28 parcels of which only are marked in red upon said map, and none of which is separately described in said complaint;

150 (c)—That, therefore, it is impossible to ascertain from said complaint whether it is the purpose and intent of the plaintiff therein to condemn each of said two above mentioned parcels of land so as aforesaid described in said paragraph VI of said complaint as a whole, or whether it is the intention of the plaintiff in said complaint to condemn the separate parcels into which said two parcels are divided and segregated upon said map, Exhibit "A," or a part and portion only of said separate parcels.

151 IV.

That said complaint is ambiguous in each and all and every of the particulars in which it is above alleged, set forth and specified that the same is uncertain, and in the further and other particular that the same is contradictory in this that the land hereinabove referred to as having been described in paragraph VI of said complaint is other and different from the land al-
152 leged in paragraph IX of said complaint to be shown upon said map as the land so sought to be condemned.

V.

That said complaint is unintelligible in each and all and every of the particulars in which it is above alleged, set forth and specified that the same is uncertain, and in each and all and every of the particulars in which it is above alleged, set forth and specified that it is ambiguous.

153 Wherefore, this defendant prays to be hence dismissed with its costs.

ANDERSON & ANDERSON,

Attorneys for Defendant Rindge Company, a Corporation.

Endorsed: Received copy of the within demurrer this 5 day of Dec., 1916. A. J. Hill, county counsel; by C. E. Haas, dep., attorney for plaintiff.

Filed Dec. 5, 1916. H. J. Lelande, clerk; by H. Brodek, deputy.

154 [TITLE OF COURT AND CAUSE.]

Order for Amendment by Interlineation.

On motion of A. J. Hill, county counsel, and Edward T. Bishop, deputy county counsel, attorneys for the plaintiff above named, it is hereby ordered that the complaint in the above entitled action may be amended as follows:

(1) By adding the words "by a two-thirds vote of all the members" after the figures "1916"
155 and before the word "duly" in line 24, page 2 of said complaint.

(2) By substituting a new map consisting of five sheets, to be marked Exhibit "A," in lieu and instead of Exhibit "A" now attached to said complaint.

The deft. objects to the order allowing the amendment. Deft. is given 10 days to plead to the complaint as so amended.

156 It is further ordered that said clerk make said amendment by interlineation and the parties consenting thereto that the clerk detach from the complaint the map therein referred to as Ex. A, sheets 1, 2, 3, 4 & 5, and keep the same, and the map hereinabove in paragraph No. 2, separately from the said complaint.

Dated this 8th day of January, 1918.

GRANT JACKSON,

Judge.

157 Approved.

A. J. HILL,
County Counsel;
EDWARD T. BISHOP,
Deputy County Counsel,
For Plff.

Approved subject to objection above stated.
ANDERSON & ANDERSON,
For Defts.

Endorsed: Department No. 16. Filed Jan. 8,
158 1918. H. J. Lelande, clerk; by Geo. B. Whiteleather, deputy.

[TITLE OF COURT AND CAUSE.]

Demurrer of Defendant May K. Rindge to Complaint as Amended.

Now comes May K. Rindge, one of the defendants in the above-entitled action, and demurring to the complaint therein as amended
159 for grounds of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

II.

That said complaint as to this defendant is uncertain in the following particulars, to-wit:

First—That it cannot be ascertained therefrom which or how many of the parcels of land

160 described in paragraph VI thereof are claimed and alleged by the plaintiff to be the property of this defendant.

Second—That it cannot be ascertained therefrom which or how many of the parcels of land described in paragraph VI thereof are claimed and alleged by the plaintiff to be a part of the entire tract of land further described in paragraph VI thereof, the description of which com-
161 mences at line 7, page 130, of said complaint, and ends with line 21 of page 131 thereof.

Third—That it cannot be ascertained therefrom what relation the property sought to be condemned thereby, whether it be the property of this defendant or of any other defendant or defendants, bears to any other property of which it is a part; and more particularly in this that the map filed as an amendment to said complaint and as the substituted Exhibit "A" there-
162 of fails to contain or show in its entirety, or by proper subdivision or description, or delineation, any parcel of land specifically of which any part or portion of the land of this defendant sought to be condemned forms a part, and likewise and in like manner fails to show specifically any parcel or parcels of land of which any part or portion of the lands of either or any of the other defendants sought to be condemned form a part.

163 III.

That said complaint as amended is ambiguous in each and all and every of the particulars in which it is hereby alleged to be uncertain.

IV.

That said complaint as amended is unintelligible in each and all and every of the particulars in which it is hereby alleged to be uncertain.

V.

164 Wherefore, this defendant prays to be hence dismissed with her costs.

. . . . . .

. . . . . .

Attorneys for Said Defendant.

In the Superior Court of the state of California, in and for the county of Los Angeles. County of Los Angeles, plaintiff, vs. Rindge Company, a corporation, *et al.*, defendants. No. B-43572-16.

165 POINTS AND AUTHORITIES ON DEMURRERS OF VARIOUS DEFENDANTS TO COMPLAINT AS AMENDED.

I.

The Map Accompanying the Complaint as Amended and Substituted as Exhibit "A" Thereof, Is Not Sufficient to Give the Information Required of It by the Statute.

While Sec. 1244 of the Code of Civil Procedure is slightly ambiguous as to just what the

166 map which it prescribes shall contain, it seems to have been clearly the purpose and intent of the Legislature, and it seems to be clearly the purpose and intent of the law, that the map thus required to accompany the complaint should contain all of the matters and things necessary to show what property the plaintiff seeks to condemn and its general relation, or, to be more exact, its specific relation, to any larger tract of which it forms a part.

167 In other words, the map should contain those matters which the map annexed in the case of *Mendocino County v. Peters*, 2 Cal. App. 24, was found to contain, and which were held to be sufficient, namely: "The nature of the alteration, the location, general route and termini, the description of the land sought to be taken, AND ITS RELATION TO THE LARGER PARCEL OF WHICH IT IS A PART." (Op. p. 26.)

168 The complaint in question seeks to condemn nearly 150 separate and distinct parcels.

It delineates them upon a map showing but a part only of the entire tract or tracts of which it is claimed that they are a part, and their general relation to the entire tract or tracts as a whole cannot, therefore, be ascertained by any inspection of this particular map upon which these parcels are specifically located.

As a part of Exhibit "A" and accompanying this specific map there is a large general map

169 that purports to be a map of the Rancho To-
panga Malibu Sequit, and this map contains a
sort of general outline of the proposed road
through the ranch, but does not show either or
any of the innumerable small parcels sought to
be condemned on either side of, and as adjuncts
to, the main road, nor does it, in our opinion,
either as standing alone or as coupled up with
the more specific map of the road, but partial
map of the ranch, furnish any accurate infor-
170 mation by which the relations of these many
parcels to the larger parcels from which they
are taken can be specifically located or deter-
mined.

II.

General Uncertainty, Ambiguity and Unintelligibility as to the Defendant May K. Rindge.

At the commencement of paragraph VI, page 114, there is the following allegation: "That
171 the lands described in paragraph II of this complaint embrace *a parcel* of land described as follows, to-wit:" then follows a description by metes and bounds of a 40 foot strip of land.

On page 118 is the following allegation "Also the following described parcels of land, being in division 1 of said Malibu road," etc., followed by separate metes and bounds descriptions of some 21 separate and distinct parcels of land.

172 On pages 129 and 130 is the following allegation: "That plaintiff is informed and believes and therefore alleges that the defendant May K. Rindge, a widow, is the owner of the parcels of land last above described, sought to be condemned in this action, and that said parcels of land include only a part of an entire tract of land owned by said defendant May K. Rindge a widow, which said entire tract of land is described as follows, to-wit:"

173 We contend that it is decidedly uncertain as to whether this paragraph refers to all of the preceding parcels described in paragraph VI, or merely technically to those "last above described" —that is, to the 21 "last above described," and that, therefore, the complaint is uncertain, ambiguous and unintelligible in this particular.

III.

Same as to Defendant Rindge Company.

174 An examination by the court of the allegation at the commencement of page 134 of the allegations commencing with line 14 of page 160; of the allegations commencing at line 25 of page 171; of the allegations commencing at line 8 of page 176; of the allegations commencing at line 1 of page 181; of the allegations commencing at line 22 of page 192; of the allegations commencing at line 1 of page 198; of the allegations commencing with line 13 of page 204; of the

allegations commencing at line 24 of page 205; of the allegations commencing at line 16 of page 226; and, finally, of the allegations on page 251, will convince the court that the same defect, although in a greater degree, exists as to the defendant Rindge Company.

Taken literally, the "last above described" "parcels of land" referred to in the allegations on page 231 embrace only those parcels of land specifically following the allegations commencing with "also all the following described parcels of land" at lines 16 and 17 of page 226.

Perhaps we might rely literally upon the strict language of the complaint in this behalf, and insist that our client in this regard was only charged with the ownership of these last parcels, but we believe the complaint to be sufficiently uncertain, unintelligible and ambiguous in this behalf to warrant the interposition of this demurrer, and to warrant its being made more certain by amendment.

Respectfully submitted,

ANDERSON & ANDERSON,

NATHAN NEWBY,

Attorneys for Said Defendants.

Endorsed: Received copy of the within demurrer this 28 day of Jan., 1918. A. J. Hill, county counsel; by E. T. Bishop, attorney for plaintiff.

178 Filed Jan. 28, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Demurrer of Rindge Company to Complaint as Amended.

Now comes Rindge Company, a corporation, one of the defendants in the above-entitled action, and demurring to the complaint therein as
179 amended for grounds of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

II.

That said complaint as to this defendant is uncertain in the following particulars, to-wit:

First—That it cannot be ascertained therefrom which or how many of the parcels of land
180 described in paragraph VI thereof are claimed and alleged by the plaintiff to be the property of this defendant;

Second—That it cannot be ascertained therefrom which or how many of the parcels of land described in paragraph VI thereof are claimed and alleged by the plaintiff to be a part of the entire tract or tracts of land further described in paragraph VI thereof, the description of which commences at line 24 of page 231 of said

181 complaint as amended, and ends with line 5 of page 232 of said complaint as amended;

Third—That it cannot be ascertained therefrom what relation the property sought to be condemned thereby, whether it be the property of this defendant or of any other defendant or defendants, bears to any other property of which it is a part; and more particularly in this that the map filed as an amendment to said complaint and as the substituted Exhibit "A" thereof fails
182 to contain or show in its entirety, or by proper subdivision or description or delineation, any parcel of land specifically of which any part or portion of the land of this defendant sought to be condemned forms a part, and likewise and in like manner fails to show specifically any parcel or parcels of land of which any part or portion of the lands of either or any of the other defendants sought to be condemned form a part.

III.

183 That said complaint as amended is ambiguous in each and all and every of the particulars in which it is hereby alleged to be uncertain.

IV.

That said complaint as amended is unintelligible in each and all and every of the particulars in which it is hereby alleged to be uncertain.

184 Wherefore, this defendant prays to be hence dismissed with its costs.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendant.

In the Superior Court of the state of California, in and for the county of Los Angeles.

County of Los Angeles, plaintiff, vs. Rindge Company, a corporation, *et al.*, defendants.

185 No. B43572-16.

POINTS AND AUTHORITIES ON DEMURRERS OF VARIOUS DEFENDANTS TO COMPLAINT AS AMENDED.

I.

The Map Accompanying the Complaint as Amended and Substituted as Exhibit "A" Thereof, Is Not Sufficient to Give the Information Required of It by the Statute.

186 While Sec. 1244 of the Code of Civil Procedure is slightly ambiguous as to just what the map which it prescribes shall contain, it seems to have been clearly the purpose and intent of the Legislature, and it seems to be clearly the purpose and intent of the law, that the map thus required to accompany the complaint should contain all of the matters and things necessary to show what property the plaintiff seeks to condemn and its general relation, or, to be more

187 exact, its specific relation, to any larger tract of which it forms a part.

In other words, the map should contain those matters which the map annexed in the case of *Mendocino County v. Peters*, 2 Cal. App. 24, was found to contain, and which were held to be sufficient, namely: "The nature of the alteration, the location, general route and termini, the description of the land sought to be
188 taken, AND ITS RELATION TO THE LARGER PARCEL OF WHICH IT IS A PART." (Op. p. 26.)

The complaint in question seeks to condemn nearly 150 separate and distinct parcels.

It delineates them upon a map showing but a part only of the entire tract or tracts of which it is claimed that they are a part, and their general relation to the entire tract or tracts as a whole cannot, therefore, be ascertained by any inspection of this particular map upon which
189 these parcels are specifically located.

As a part of Exhibit "A" and accompanying this specific map there is a large general map that purports to be a map of the Rancho Topanga Malibu Sequit, and this map contains a sort of general outline of the proposed road through the ranch, but does not show either or any of the innumerable small parcels sought to be condemned on either side of, and as adjuncts to, the main road, nor does it, in our opinion, either as standing alone or as coupled up with

190 the more specific map of the road, but partial map of the ranch, furnish any accurate information by which the relations of these many parcels to the larger parcels from which they are taken can be specifically located or determined.

II.

General Uncertainty, Ambiguity and Unintelligibility as to the Defendant May K. Rindge.

At the commencement of paragraph VI, page
191 114, there is the following allegation: "That the lands described in paragraph II of this complaint embrace *a parcel* of land described as follows, to-wit:" then follows a description by metes and bounds of a 40 foot strip of land.

On page 118 is the following allegation: "Also the following described parcels of land, being in division 1 of said Malibu road," etc., followed by separate metes and bounds descriptions of some 21 separate and distinct parcels of
192 land.

On pages 129 and 130 is the following allegation: "That plaintiff is informed and believes and therefore alleges that the defendant May K. Rindge, a widow, is the owner of the parcels of land last above described, sought to be condemned in this action, and that said parcels of land include only a part of an entire tract of land owned by said defendant May K. Rindge, a widow, which said entire tract of land is described as follows, to-wit:"

193 We contend that it is decidely uncertain as to whether this paragraph refers to all of the preceding parcels described in paragraph VI, or merely technically to those "last above described"—that is, to the 21 "last above described," and that, therefore, the complaint is uncertain, ambiguous and unintelligible in this particular.

III.

194 *Same as to Defendant Rindge Company.*

An examination by the court of the allegation at the commencement of page 134 of the allegations commencing with line 14 of page 160; of the allegations commencing at line 25 of page 171; of the allegations commencing at line 8 of page 176; of the allegations commencing at line 1 of page 181; of the allegations commencing at line 22 of page 192; of the allegations commencing at line 1 of page 198; of the allegations
195 commencing with line 13 of page 204; of the allegations commencing at line 24 of page 205; of the allegations commencing at line 16 of page 226; and, finally, of the allegations on page 251, will convince the court that the same defect, although in a greater degree, exists as to the defendant Rindge Company.

Taken literally, the "last above described" "parcels of land" referred to in the allegations on page 231 embrace only those parcels of land

196 specifically following the allegations commencing with "also all the following described parcels of land" at lines 16 and 17 of page 226.

Perhaps we might rely literally upon the strict language of the complaint in this behalf, and insist that our client in this regard was only charged with the ownership of these last parcels, but we believe the complaint to be sufficiently uncertain, unintelligible and ambiguous in this behalf to warrant the interposition of this
197 demurrer, and to warrant its being made more certain by amendment.

Respectfully submitted,

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Attorneys for Said Defendants.

Endorsed: Received copy of the within demurrer this 28 day of Jan., 1918. A. J. Hill, county counsel; by E. T. Bishop, attorney for
198 plaintiff.

Filed Jan. 28, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

199 [TITLE OF COURT AND CAUSE.]

Demurrer of Defendants Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Hueneme, Malibu & So. Ry., a Corporation; Hueneme, Malibu & Port Los Angeles Ry., a Corporation; Pacific Mutual Life Insurance Co., a Corporation, and Pacific Mutual Life Insurance Co. of California, a Corporation, to Com-
200 **plaint as Amended.**

Now come Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Hueneme, Malibu & Southern Railway, a corporation; Hueneme, Malibu & Port Los Angeles Railway, a corporation; the Pacific Mutual Life Insurance Company, a corporation, and the Pacific Mutual Life Insurance Company of California, a corporation, defendants in the above-
201 entitled action, and demurring to the complaint as amended of plaintiff therein for grounds of demurrer say:

I.

That said complaint does not state facts sufficient to constitute a cause of action against these defendants, or against either or any of them.

II.

That said complaint is uncertain in the following particulars: That it cannot be ascer-

tained therefrom what relation any parcel or parcels of the property sought to be condemned thereby bears to any other property of which it is a part, and more particularly in this, that the map filed as an amendment to said complaint and as the substituted Exhibit "A" thereof fails to contain or show in its entirety, or by proper subdivision or description or delineation, any parcel of land specifically of which any part or portion of the land of either or any of the defendants sought to be condemned form a part.

III.

That said complaint as amended is ambiguous in each and all and every of the particulars in which it is hereby alleged to be uncertain.

IV.

That said complaint as amended is unintelligible in each and all and every of the particulars in which it is hereby alleged to be uncertain.

Wherefore, these defendants, and each of them, pray to be hence dismissed with their costs.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for said Defendants.

205 In the Superior Court of the state of California, in and for the county of Los Angeles.

County of Los Angeles, plaintiff, vs. Rindge Company, a corporation, *et al.*, defendants.

No. B-43572-16.

POINTS AND AUTHORITIES ON DEMURRERS OF VARIOUS DEFENDANTS TO COMPLAINT AS AMENDED.

I.

206 *The Map Accompanying the Complaint as Amended and Substituted as Exhibit "A" Thereof, Is Not Sufficient to Give the Information Required of It by the Statute.*

While Sec. 1244 of the Code of Civil Procedure is slightly ambiguous as to just what the map which it prescribes shall contain, it seems to have been clearly the purpose and intent of the Legislature, and it seems to be clearly the purpose and intent of the law, that the map thus
207 required to accompany the complaint should contain all of the matters and things necessary to show what property the plaintiff seeks to condemn and its general relation, or, to be more exact, its specific relation, to any larger tract of which it forms a part.

In other words, the map should contain those matters which the map annexed in the case of *Mendocino County v. Peters*, 2 Cal. App. 24, was found to contain, and which were held to be

208 sufficient, namely: "The nature of the alteration, the location, general route and termini, the description of the land sought to be taken, AND ITS RELATION TO THE LARGER PARCEL OF WHICH IT IS A PART." (Op. p. 26.)

The complaint in question seeks to condemn nearly 150 separate and distinct parcels.

It delineates them upon a map showing but a part only of the entire tract or tracts of which it is claimed that they are a part, and their gen-
209 eral relation to the entire tract or tracts as a whole cannot, therefore, be ascertained by any inspection of this particular map upon which these parcels are specifically located.

As a part of Exhibit "A" and accompanying this specific map there is a large general map that purports to be a map of the Rancho Topanga Malibu Sequit, and this map contains a sort of general outline of the proposed road
210 through the ranch, but does not show either or any of the innumerable small parcels sought to be condemned on either side of, and as adjuncts to, the main road, nor does it, in our opinion, either as standing alone or as coupled up with the more specific map of the road, but partial map of the ranch, furnish any accurate information by which the relations of these many parcels to the larger parcels from which they are taken can be specifically located or determined.

211 II.

General Uncertainty, Ambiguity and Unintelligibility as to the Defendant May K. Rindge.

At the commencement of paragraph VI, page 114, there is the following allegations: "That the lands described in paragraph II of this complaint embrace *a parcel* of land described as follows, to-wit:" then follows a description by metes and bounds of a 40 foot strip of land.

212 On page 118 is the following allegation: "Also the following described parcels of land, being in division 1 of said Malibu road," etc., followed by separate metes and bounds descriptions of some 21 separate and distinct parcels of land.

On pages 129 and 130 is the following allegation: "That plaintiff is informed and believes and therefore alleges that the defendant May K. Rindge, a widow, is the owner of the parcels of
213 land last above described, sought to be condemned in this action, and that said parcels of land include only a part of an entire tract of land owned by said defendant May K. Rindge, a widow, which said entire tract of land is described as follows, to-wit:"

We contend that it is decidedly uncertain as to whether this paragraph refers to all of the preceding parcels described in paragraph VI, or merely technically to those "last above de-

scribed"—that is, to the 21 "last above described," and that, therefore, the complaint is uncertain, ambiguous and unintelligible in this particular.

III.

Same as to Defendant Rindge Company.

An examination by the court of the allegation at the commencement of page 134 of the allegations commencing with line 14 of page 160; of the allegations commencing at line 25 of page 171; of the allegations commencing at line 8 of page 176; of the allegations commencing at line 1 of page 181; of the allegations commencing at line 22 of page 192; of the allegations commencing at line 1 of page 198; of the allegations commencing with line 13 of page 204; of the allegations commencing at line 24 of page 205; of the allegations commencing at line 16 of page 226; and, finally, of the allegations on page 251, will convince the court that the same defect, although in a greater degree, exists as to the defendant Rindge Company.

Taken literally, the "last above described" "parcels of land" referred to in the allegations on page 231 embrace only those parcels of land specifically following the allegations commencing with "also all the following described parcels of land" at lines 16 and 17 of page 226.

Perhaps we might rely literally upon the strict language of the complaint in this behalf, and

insist that our client in this regard was only charged with the ownership of these last parcels, but we believe the complaint to be sufficiently uncertain, unintelligible and ambiguous in this behalf to warrant the interposition of this demurrer, and to warrant its being made more certain by amendment.

Respectfully submitted,

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Attorneys for Said Defendants.

Endorsed: Received copy of the within demurrer this 28 day of Jan., 1918. A. J. Hill, county counsel; by E. T. Bishop, attorney for plaintiff.

Filed Jan. 28, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

In the Superior Court, county of Los Angeles, state of California. Department No. 16.

Present: Hon. Grant Jackson, judge; Geo. B. Whiteleather, deputy clerk and deputy sheriff.

January 30, 1918.

County of Los Angeles, plaintiff, vs. Rindge Company, *et al.*, defendants.

Case No. B 43572.

Calendar No. 8.

Order Overruling Demurrer to Complaint as Amended.

The demurrers (3) of the defendants F. H. Rindge *et al.*, Rindge Co. and May K. Rindge

220 to the complaint as amended coming on to be heard, are overruled; defendants are given 30 days to answer, and plaintiff is given five days to plead to the answer or to move to strike out.

I hereby certify the foregoing to be a full true and correct copy of an order in the above-entitled cause entered on the minutes of said Superior Court, Department No. 16, in minute book 6, page 36.

221 Attest my hand, and the seal of the said Superior Court, this 2nd day of February, 1918.

(Seal) H. J. LELANDE, *Clerk.*

By M. LOUGHRAN, *Deputy Clerk.*

[TITLE OF COURT AND CAUSE.]

Answer of Defendant Hueneme, Malibu & So. Ry., a Corporation, to Complaint.

222 Now comes the Hueneme, Malibu & Southern Railway, a corporation, one of the defendants in the above-entitled action, and answering the complaint of the plaintiff in said action says:

I.

That it denies according to its information and belief that it is necessary for county purposes, or any county purpose or purposes, or that the public or any interest or convenience or necessity, or either, require the acquisition of an easement in or over the properties, or any part, portion or parcel of the properties, de-

scribed in paragraph II of the complaint for the establishment or maintenance of a public or any highway, or for any other purpose or purposes whatsoever, either as prayed for in the complaint, or otherwise, or at all.

II.

That it denies according to its information and belief that none of the property described in paragraph II of the complaint and sought to be condemned in this action has heretofore been appropriated to any public use, but on the contrary this defendant is informed and believes, and upon its information and belief alleges, that certain portions thereof, the exact descriptions of which this defendant has not as yet been able to definitely ascertain, have been deeded and dedicated to this defendant and to its co-defendant Hueneme, Malibu & Port Los Angeles Railway, a corporation, as and for an easement for a right of way for a steam railroad running between and through more than one county in the state of California, and located upon, along and across a portion of the said lands described in paragraph II of the complaint herein.

III.

That this defendant admits and alleges that it claims an interest in certain of the property described in paragraph II of the complaint herein and sought to be condemned in this action, to-wit: An easement for a right of way for a

steam railroad running between and through more than one county in the state of California, but that it has not as yet been able to sufficiently and definitely ascertain the exact location of its said right of way with reference to the said parcels of land described in paragraph II of the complaint, and that it has not as yet been able to ascertain and estimate the value thereof as to that portion thereof sought to be condemned herein, and has not been able to ascertain the damage which will result to the remainder of its right of way if the said portion of its right of way embraced in the lands described in paragraph II of the complaint should be condemned and taken as prayed in the complaint, and, therefore, it respectfully requests the right to amend this answer in those particulars when it shall have definitely ascertained and determined the facts necessary to such an amendment should such an amendment become and be necessary.

And for another and further and separate answer and defense to this action this defendant alleges:

That it is informed and believes, and on its information and belief alleges, that the above-entitled court is without jurisdiction to try the issues between the plaintiff and this defendant as to the right of the plaintiff to condemn any railroad right of way or easement of this defendant, particularly in this, that this defendant

as a common carrier and as a corporation organized for the purpose of operating and maintaining a steam railroad in and through more than one county of this state is wholly within the jurisdiction of the Railroad Commission of the state of California in the matter of its easements for rights of way.

Wherefore, this defendant prays that the plaintiff take nothing as against it, and that it recover its costs in this behalf expended.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant Hueneme Malibu & So. Railway.

Duly verified.

Endorsed: Received copy of the within answer this 1 day of March, 1918. A. J. Hill, county counsel; by Edward T. Bishop, deputy, attorney for plaintiff.

Filed Mar. 1, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Answer of Defendant Hueneme, Malibu & Port Los Angeles Railway, a Corporation, to Complaint.

Now comes the Hueneme, Malibu & Port Los Angeles Railway, a corporation, one of the defendants in the above-entitled action, and an-

232 swering the complaint of the plaintiff in said action says:

I.

That it denies according to its information and belief that it is necessary for county purposes, or any county purpose or purposes, or that the public or any interest or convenience or necessity, or either, require the acquisition of an easement in or over the properties, or any part, portion or parcel of the properties, described in
233 paragraph II of the complaint for the establishment or maintenance of a public or any highway, or for any other purpose or purposes whatsoever, either as prayed for in the complaint, or otherwise, or at all.

II.

That it denies according to its information and belief that none of the property described in paragraph II of the complaint and sought to
234 be condemned in this action has heretofore been appropriated to any public use, but on the contrary this defendant is informed and believes, and upon its information and belief alleges, that certain portions thereof, the exact descriptions of which this defendant has not as yet been able to definitely ascertain, have been deeded and dedicated to this defendant and to its co-defendant, Hueneme, Malibu & Southern Railway, a corporation, as and for an easement for a right of way for a steam railroad running

235 between and through more than one county in the state of California, and located upon, along and across a portion of the said lands described in paragraph II of the complaint herein.

III.

That this defendant admits and alleges that it claims an interest in certain of the property described in paragraph II of the complaint herein and sought to be condemned in this action, to-wit: An easement for a right of way for a
236 steam railroad running between and through more than one county in the state of California, but that it has not as yet been able to sufficiently and definitely ascertain the exact location of its said right of way with reference to the said parcels of land described in paragraph II of the complaint, and that it has not as yet been able to ascertain and estimate the value thereof as to that portion thereof sought to be condemned
237 herein, and has not been able to ascertain the damage which will result to the remainder of its right of way if the said portion of its right of way embraced in the lands described in paragraph II of the complaint should be condemned and taken as prayed in the complaint, and, therefore, it respectfully requests the right to amend this answer in those particulars when it shall have definitely ascertained and determined the facts necessary to such an amendment should such an amendment become and be necessary.

And for another and further and separate answer and defense to this action this defendant alleges·

That it is informed and believes, and upon its information and belief alleges, that the above-entitled court is without jurisdiction to try the issues between the plaintiff and this defendant as to the right of the plaintiff to condemn any railroad right of way or easement of this defendant, particularly in this, that this defendant as a common carrier and as a corporation organized for the purpose of operating and maintaining a steam railroad in and through more than one county of this state is wholly within the jurisdiction of the Railroad Commission of the state of California in the matter of its easements for rights of way.

Wherefore, this defendant prays that the plaintiff take nothing as against it, and that it recover its costs in this behalf expended.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant Hueneme, Malibu & Port Los Angeles Railway.

Duly verified.

Endorsed: Received copy of the within answer this 1 day of March, 1918. A. J. Hill, county counsel; by Edward T. Bishop, deputy, attorney for plaintiff.

241 Filed Mar. 1, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Answer of Rindge Company to Complaint.

Now comes Rindge Company, a corporation, one of the defendants in the above-entitled action, and answering the complaint of plaintiff in said action says:

242

I.

That it has not sufficient information or belief, or either, to enable it to answer the allegations of paragraph II of said complaint, and, therefore, it denies all and singular, generally and specifically, each and every of the said allegations, and the whole thereof.

II.

That it denies that it is necessary for county
243 purposes, or for any purpose or purposes whatever, or that the public interest or convenience or necessity, or either, require the acquisition of any easement whatever in or over any part or portion of the property described in paragraph II of the complaint for any purpose or purposes whatsoever.

III.

That it denies that the lands in or over which it is necessary to acquire any easement are those, or either or any of those, pieces or parcels of

244 land more particularly, or at all, described in the resolution referred to in the complaint, and set forth in paragraph II thereof, or that it is necessary to acquire any easement whatever for any purpose or purposes whatever over any part or portion of said, or of any of said, lands.

IV.

That it denies according to its information and belief that none of the property described in paragraph II of the complaint and sought to
245 be condemned in this action has heretofore been appropriated to any public use.

V.

That it denies that the alleged public use referred to in the complaint and in paragraph IV thereof is located by the taking of said lands, or any part or portion thereof, in the manner, or in any manner, which will be most, or at all, compatible with the greatest or any public good,
246 or the least or any private injury, or that there is any such, or any necessity for such, public use as in said complaint alleged.

VI.

That it admits that it is the owner of the so-called entire tract of land alleged to contain 13,315.70 acres, and purporting to be described in subdivision "2" of paragraph VI of the complaint as being the tract of land in which the various and sundry other parcels described in said subdivision "2" of paragraph VI are al-

leged to be included, and if the said various and sundry other parcels last referred to are so included in said larger parcel then this defendant admits that it is the owner of each and all and every of them subject to certain easements and rights of way of the defendants Hueneme, Malibu & Southern Ry., and Hueneme, Malibu & Port Los Angeles Ry. for railroad purposes, but that this defendant has not had sufficient opportunity to check up and verify the various descriptions of said last mentioned parcels of land, and respectfully requests and reserves the right to amend this answer in this behalf when it has definitely and accurately ascertained the facts as to said various and sundry pieces and parcels of land last referred to.

VII.

That it denies according to its information and belief that either the defendant Henry W. Keller, or the defendant Pacific Mutual Life Insurance Co. of California, a corporation, or the defendant Pacific Mutual Life Insurance Company, a corporation, or the defendant Rhoda Rindge Adamson, or the defendant Merritt H. Adamson, or the defendant Samuel K. Rindge, or either or any of them, has any interest whatsoever in any part or portion of any of the lands described in the complaint.

87

VIII.

That it denies according to its information and belief that all of the parcels of land sought to be condemned in this action, or either or any of them marked in red upon the map now filed herein as an amendment to the complaint and marked Exhibit "A," are correctly delineated or shown upon said map, or that the larger parcel or which said lands sought to be condemned herein are alleged to be a part is correctly delineated or shown upon said map.

IX.

That this defendant alleges that it has not had sufficient opportunity to check up the various descriptions of the parcels of land described in subdivision "2" of paragraph VI of the complaint, or to ascertain the respective values thereof, or the damages which would accrue to the larger parcel of land of which the parcels alleged to belong to it and sought to be condemned herein form a part by reason of the condemnation and taking of said last mentioned parcels, and, therefore, it respectfully requests the right, should it become necessary, to amend this answer in those regards when the facts necessary for the drafting of such amendment are ascertained by it.

253 Wherefore, this defendant prays that plaintiff take nothing as against it, and that it recover its costs.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant Rindge Co.

Duly verified.

Endorsed: Received copy of the within answer this 1st day of March, 1918. A. J. Hill, county counsel; by Edward T. Bishop, deputy
254 attorney for plaintiff.

Filed Mar. 1, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Answer of Defendant Mary K. Rindge to Complaint.

Now comes May K. Rindge, one of the de-
255 fendants in the above-entitled action, and answering the complaint of plaintiff in said action says:

I.

That she has not sufficient information or belief or either to enable her to answer the allegations of paragraph II of said complaint, and, therefore, she denies all and singular, generally and specifically, each and all of the said allegations, and the whole thereof.

256 II.

That she denies that it is necessary for county purposes, or for any purpose or purposes whatever, or the public interest or convenience or necessity, or either, require the acquisition of an easement, or of any easement, in or over the properties described in paragraph II of the complaint for the establishment or maintenance of a public or any highway, or for any other purpose whatever, either as prayed for in the
257 complaint herein, or otherwise, or at all.

III.

That she denies that the lands in or over which it is necessary to acquire any easement are those, or either or any of those, pieces or parcels of land more particularly or at all described in the resolution referred to in the complaint and set forth in paragraph II thereof, or that it is necessary to acquire any easement
258 whatever for any purpose or purposes whatever, over any part or portion of said, or any of said, lands.

IV.

That she denies according to her information and belief that none of the property described in paragraph II of the complaint and sought to be condemned in this action has heretofore been appropriated to any public use.

259 V.

That she denies that the alleged public use referred to in the complaint and in paragraph IV thereof is located by the taking of said lands, or any part or portion thereof, in the manner, or in any manner, which will be most, or at all, compatible with the greatest or any public good, or the least or any private injury, or that there is any such, or any necessity for such, public use as in said complaint alleged.

260 VI.

That she admits that she is the owner of that portion of the Rancho Topango Malibu Sequit in the county of Los Angeles, state of California, consisting of 1856.75 acres, and described by metes and bounds in paragraph VI of the complaint, and of the whole thereof, and that in so far as the various specific parcels of land described in paragraph VI of the complaint are

261 concerned and alleged to be parts and parcels of said 1856.75 acres, are, as a matter of fact, parts and parcels of said 1856.75 acres that she is the owner thereof; but in this behalf this defendant further alleges that she has had no opportunity to check up or verify the complaint in this behalf, and, therefore, except as hereinabove set forth makes no answer to the same as to her specific ownership of said specific parcels of land, but requests and reserves the right to amend her answer in this behalf when she has

262 fully ascertained all of the facts necessary thereto.

VII.

That she denies according to her information and belief that either the defendant Henry W. Keller, or the defendant Pacific Mutual Life Insurance Co. of California, a corporation, or the defendant Pacific Mutual Life Insurance Co., a corporation, or the defendant Rhoda Rindge Adamson, or the defendant Merritt H.
263 Adamson, or the defendant Samuel K. Rindge, or either or any of them, has any interest whatsoever in any part or portion of any of the lands described in the complaint.

VIII.

That she denies according to her information and belief that all of the parcels of land sought to be condemned in this action, or either or any of them, marked in red upon the map now filed herein as an amendment to the complaint and
264 marked Exhibit "A," are correctly delineated or shown upon said map, or that the larger parcel of which said lands sought to be condemned herein are alleged to be a part is correctly delineated or shown upon said map.

IX.

That this defendant alleges that she has not had sufficient opportunity to check up the various descriptions of the parcels of land described in subdivision "1" of paragraph VI of the com-

plaint, or to ascertain the respective values thereof, or the damages which would accrue to the larger parcel of land of which the parcels alleged to belong to her and sought to be condemned herein form a part by reason of the condemnation and taking of said last mentioned parcels, and, therefore, she respectfully requests the right, should it become necessary, to amend this answer in those regards when the facts necessary for the drafting of such amendment are ascertained by her.

Wherefore, this defendant prays that plaintiff take nothing as against her, and that she recover her costs.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant May K. Rindge.

Duly verified.

Endorsed: Received copy of the within answer this 1 day of March, 1918. A. J. Hill, county counsel; by Edward T. Bishop, deputy, attorney for plaintiff.

Filed Mar. 1, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

268 [TITLE OF COURT AND CAUSE.]

Disclaimer of Defendants Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Her Husband, and the Pacific Mutual Life Insurance Co., a Corporation, and the Pacific Mutual Life Insurance Co., of Cal., a Corporation.

Now come Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, her hus-
269 band; the Pacific Mutual Life Insurance Company, a corporation, and the Pacific Mutual Life Insurance Company of California, a corporation, defendants in the above entitled action, and each for himself and not for the other, expressly disclaims any interest of any kind or character in or to any part or parcel of the property described in the complaint in said action.

Dated February 28th, 1918.

ANDERSON & ANDERSON,
270 NATHAN NEWBY,
Attorneys for Said Disclaiming Defendants.

Endorsed: Received copy of the within disclaimer this 1 day of March, 1918. A. J. Hill, county counsel; by Edward T. Bishop, deputy, attorney for plaintiff.

Filed Mar. 1, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

271 [TITLE OF COURT AND CAUSE.]

Disclaimer of Samuel K. Rindge, Defendant.

Comes now Samuel K. Rindge, defendant in the above entitled action, and in reply to the complaint of the plaintiff above named, disclaims and alleges that he has no right, title or interest in or to the property described in said complaint, or in any part thereof.

Dated Los Angeles, Cal., March 4th, 1918.

272 SAMUEL K. RINDGE.

State of California, County of Los Angeles—ss.

On this 4th day of March, in the year nineteen hundred and eighteen, A. D., before me, J. H. Schenck, a notary public in and for the said county of Los Anegles, state of California, residing therein, duly commissioned and sworn, personally appeared Samuel K. Rindge, personally known to me to be the person whose name is
273 subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

(Seal) J. H. SCHENCK,

Notary Public in and for Los Angeles County, State of California.

Endorsed: Filed Mar. 13, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

274 [TITLE OF COURT AND CAUSE.]

Demurrer of Plaintiff to Answer of Hueneme, Malibu & So. Railway, a Corporation.

Comes now the plaintiff County of Los Angeles and by way of demurrer to the answer of the Hueneme, Malibu & So. Railway, a corporation, the defendant in the above entitled action, plaintiff alleges:

That the further and separate answer and
275 defense of said defendant; that is, that portion of said answer beginning with line 30 of page 2 to and including line 9 of page 3 thereof, does not, nor does any portion thereof, state facts sufficient to constitute an answer or a defense in the above entitled action.

A. J. HILL,
County Counsel, and
EDWARD T. BISHOP,
Deputy County Counsel,
276 *Attorneys for Plaintiff County of Los Angeles.*

AUTHORITY IN SUPPORT OF DEMURRER.

"The procedure provided in section forty-seven (b) of this act shall be considered as alternative and cumulative and not exclusive and the political subdivision shall continue to have the right to pursue any other procedure now or hereafter established providing for the acquisition under eminent domain proceedings of the lands, property and rights, or any part or

277 portion thereof, of any public utility, and section forty-seven (b) of this act shall not be construed as repealing any law of this state providing for such eminent domain proceedings * * *." (Subd. 11, Sec. 47b, Public Utilities Act.)

Endorsed: Received copy of the within this 16 day of Mch., 1918. Anderson & Anderson, Nathan Newby, attorney for dft.

Filed Mar. 18, 1918. H. J. Lelande, clerk;
278 by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Demurrer of Plaintiff to Answer of Hueneme, Malibu and Port Los Angeles Railway, a Corporation.

Comes now the plaintiff County of Los Angeles and by way of demurrer to the answer of
279 the Hueneme, Malibu and Port Los Angeles Railway, a corporation, the defendant in the above entitled action, plaintiff alleges:

That the further and separate answer and defense of said defendant; that is, that portion of said answer beginning with line 30 of page 2 to and including line 9 of page 3 thereof, does not, nor does any portion thereof, state facts

sufficient to constitute an answer or a defense in the above entitled action.

A. J. HILL,
County Counsel,
By EDWARD T. BISHOP,
Deputy County Counsel,
Attorneys for Plaintiff County of Los Angeles.

AUTHORITY IN SUPPORT OF DEMURRER.

"The procedure provided in section forty-seven (b) of this act shall be considered as alternative and cumulative and not exclusive and the political subdivision shall continue to have the right to pursue any other procedure now or hereafter established providing for the acquisition under eminent domain proceedings of the lands, property and rights, or any part or portion thereof, of any public utility, and section forty-seven (b) of this act shall not be construed as repealing any law of this state providing for such eminent domain proceedings * * *."
(Subd. 11, Sec. 47b, Public Utilities Act.)

Endorsed: Received copy of the within this 16 day of Mch., 1918. Anderson & Anderson, Nathan Newby, attorney dft.

Filed Mar. 18, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

283 In the Superior Court, county of Los Angeles, state of California. Department No. 16.

Present: Hon. L. H. Valentine, judge; L. A. Hill, deputy clerk and deputy sheriff.

March 22, 1918.

County of Los Angeles, plaintiff, vs. Rindge Co. *et al.*, defendants.

Case No. B 43572.

Calendar No. 5.

284 **Order Sustaining Demurrers of Plaintiff to Answers.**

The demurrers (2) of the plaintiff to the answers of Hueneme, Malibu & Port L. A. Ry. and Hueneme, Malibu & So. Ry., coming on to be heard, are sustained; defendants are given 3 days to amend and plaintiff is given five days to plead to the amended answers or to move to strike out.

Notice waived.

285 I hereby certify the foregoing to be a full, true and correct copy of an order in the above-entitled cause entered on the minutes of said Superior Court, Department No. 16, in minute book 6, page 128.

Attest my hand, and the seal of the said Superior Court, this 25th day of March, 1918.

(Seal) H. J. LELANDE, *Clerk.*

By M. LOUGHRAN, *Deputy Clerk.*

286 [TITLE OF COURT AND CAUSE.]

Amended Answer of Defendant May K. Rindge.

Now comes May K. Rindge, one of the defendants in the above-entitled action, and by leave of the court first had and obtained files this, her amended answer to the complaint of plaintiff therein as amended, and says:

I.

287 That she admits the allegations of paragraph I of said complaint.

II.

That she has not sufficient knowledge, information or belief or either to enable her to answer paragraph II of said complaint, and, therefore, she denies generally and specifically, all and singular, each and every of the said allegations, and the whole thereof.

III.

288 That she denies that it is necessary for county purposes, or for any purpose or purposes whatever, or at all, or that the public or any interest or convenience or necessity or either requires the acquisition of an or any easement in or over the properties, or any part or portion thereof, described in paragraph II of the said complaint for the establishment or maintenance of a public or any highway either as prayed for in said complaint, or otherwise, or at all.

289 IV.

That she denies that it is necessary to acquire said or any easement in or over any part or portion of the lands, or the pieces or parcels of land, or in or over any part or portion of either or any of them, described in paragraph II of said complaint, or in the alleged resolution set forth in paragraph II of said complaint;

That she denies, according to her information and belief, that none of the property described
290 in paragraph II of said complaint and sought to be condemned in this action has heretofore, or prior to the commencement of this action, been appropriated to any public use;

That she denies that there is any public use sought in this action for which said, or any part of said, lands can be condemned, or to which they, or any part of them, can be subjected; and she denies that the alleged and attempted public use attempted to be set forth and alleged in said
291 complaint is located by the taking of said, or any part or portion of said, lands in the manner, or in any manner, which will be most, or at all, compatible with the greatest or any public good, or any good whatever, or with the least private injury.

V.

That she denies, according to her information and belief, that all of the persons whose names are set forth in the title of this action are own-

292 ers or claimants of the property sought to be condemned herein, or of any part or portion thereof.

VI.

That she admits and alleges that she is the owner in fee absolute of the parcels of land first described and ending wth parcel 20-A in subdivision 1 of paragraph VI of said complaint, and of each and all of them, and that said parcels of land include only a part of an entire tract of
293 land owned by this defendant which is also described in subdivision 1 of paragraph VI of said complaint.

That she denies, according to her information and belief, that the defendants Pacific Mutual Life Insurance Company of California, a corporation; Pacific Mutual Life Insurance Company, a corporation; Samuel K. Rindge, Rhoda Rindge Adamson and Merritt H. Adamson have, or that
294 either of them has, any interest whatever of any kind or character either as alleged in said complaint, or otherwise, or at all, in or to any part or portion of the lands set forth and described in subdivision 1 of paragraph VI of said complaint, and alleged to be the property of this defendant.

That she admits that the lands described in paragraph II of said complaint embrace the various parcels of land described in subdivision 2 of paragraph VI of said complaint, ending

295 with parcel No. 146 thereof, and that said last mentioned parcels of land include only a part of an entire tract owned by the defendant Rindge Company, which is also described in subdivision 2 of paragraph VI of said complaint.

That she denies, according to her information and belief, that the defendants Henry W. Keller, Samuel K. Rindge, this defendant (other than as a stockholder in the Rindge Company),
296 Rhoda Rindge Adamson, or Merritt H. Adamson, have, or that either of them has, any interest whatever of any kind or character either as alleged in said complaint, or otherwise, or at all, in or to any part or portion of the lands set forth and described in subdivision 2 of paragraph VI of said complaint, and therein alleged to be the property of the defendant Rindge Company.

VII.

297 That she admits the allegations of paragraph VII of said complaint.

VIII.

That she has not sufficient knowledge, information or belief, or either, to enable her to answer the allegations of paragraph VIII of said complaint, and, therefore, she denies generally and specifically, all and singular, each and every of the said allegations, and the whole thereof.

298 ~~IX.~~

~~That she denies, according to her information and belief, that the map filed herein by way of amendment to said complaint and marked Exhibit "A" correctly delineates the parcels of land sought to be condemned herein; but just to what extent it is deficient and incorrect in these regards this defendant has not sufficient knowledge, information or belief to aver.~~

[Stricken out by order of court Tuesday, Oct.
299 1, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.]

And as another and further and separate answer and defense herein defendant alleges:

That she is informed and believes, and upon her information and belief alleges, that there has been no consideration or determination by the board of supervisors of the county of Los Angeles, state of California, of any of the matters or things alleged in the complaint herein
300 as amended, and particularly of the matters or things alleged in paragraph II of said complaint as amended, and that the said alleged resolution referred to in paragraph II of the said complaint as amended was arbitrarily adopted by the said board of supervisors of Los Angeles county without any consideration of the matters or things therein contained, and without the exercise of any discretion therein, and well knowing that there was no room for the exer-

301 cise of any discretion therein, but on the contrary knowing full well that all of the property proposed to be taken for a public road and highway and to be condemned as in said resolution set forth and as in said complaint as amended alleged was not, and could not be, necessary for any public use of any kind or character whatever, and particularly in this that it is located wholly and solely upon and within the confines of private property, and cannot under any cir-
302 cumstances afford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that, therefore. the taking of the same for any alleged highway purposes would be without due process of law, and in violation of the provisions of the fourteenth amendment to the Constitution of the United States, and that the taking of said property under said resolution for public highway or other purposes would be void, and would be
303 a denial to this defendant and the other owners of said property sought to be condemned of the equal protection of the laws under the Constitution of the United States, and would contravene the fourteenth amendment to the said Constitution of the United States.

~~And for another and further and separate answer and defense this defendant alleges:~~

304 I.

That all of the properties described in paragraphs II and VI of the complaint and in any way involved in this action are entirely upon and within the boundaries of that certain ranch situate in the county of Los Angeles, state of California, commonly known as the Malibu Ranch.

II.

305 That while a portion of said Malibu Ranch is owned by the defendant May K. Rindge, and the remaining portion thereof by the defendant Rindge Company, the said ranch as a whole is now, and was at the commencement of this action, and for more than twenty years prior thereto had been, treated, operated, managed and controlled as a single ranch under one joint management and control; and has at no time ever been severed or segregated into parts or
306 parcels or treated or handled or managed by the owners thereof as other than a single ranch and holding.

III.

That said method of holding, managing and controlling said ranch by its said two owners has at all times been known to the plaintiff and to the public in general.

[Stricken out by order of court Tuesday, Oct. 1, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.]

307 IV.

That said Malibu Ranch as such and under that name and designation and as embraced in the original purchase of the same by the defendant May K. Rindge and the predecessor in interest of the defendant Rindge Company at the point where the proposed road sought to be condemned herein terminates at the westerly end of said road, ends at and upon the boundary line between the counties of Los Angeles and
308 Ventura, state of California; but that the defendant Rindge Company is the owner and in the possession of, and was at the date of the commencement of this action, the owner and in the possession of property immediately adjacent thereto in the said county of Ventura, and forming a continuation into said county of Ventura for a distance of about 1¾ miles of the said ranch under the said joint management and
309 control of the said defendants May K. Rindge and Rindge Company.

V.

That there was not at the commencement of this action and is not now in the said county of Ventura at any point either contiguous to or upon any part or portion of said property of the Rindge Company or within 10 miles of the western, that is to say, the Ventura county, end of said ranch any public road of any kind or character whatever; and that said ranch can be

310 reached from said end only and wholly by private trails and ways.

VI.

That there was not at the commencement of this action, and is not now, any public road or way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles county or upon that extension of the same in Ventura county; and that the said proposed road or highway sought to be condemned
311 and taken in this action would, if condemned and taken, be located wholly and solely upon that portion of the said Malibu Ranch situated in Los Angeles county, would end and terminate upon the private property of the defendant Rindge Company at the Ventura county line; would have no laterals or outlets or feeders of any kind or character; would be located wholly and solely upon, and give access wholly and solely to, the private ranch property of the de-
312 fendants May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

[Stricken out by order of court. Tuesday, Oct. 1, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.]

VII.

That neither of said defendants owners of and jointly managing and controlling said Mal-

313 ibu Ranch as a whole, has any need or desire for said or any public road upon said ranch or upon any part or portion thereof; but that, on the contrary, any such public road would be a constant and continuous menace and damage to their said ranch property, and would largely destroy its value as a unit for ranch purposes; and would be and constitute a continual nuisance and expense to the said defendants.

VIII.

314 That by reason of the premises the taking of any part or portion of said property as contemplated by the plaintiff and as prayed for in the complaint for road or highway purposes would be without necessity of any kind or right, and in contravention of the provisions of the Constitution of the United States, and particularly in violation of the Fourteenth Amendment to said Constitution, and would be void and without due process of law, and constitute a denial
315 to the defendants May K. Rindge and Rindge Company of the equal protection of the laws under the Constitution of the United States, and would contravene the said fourteenth amendment to said Constitution.

[Stricken out by order of court Tuesday, Oct. 1, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.]

And for another and further and separate answer and defense this defendant alleges:

316 I.

That the value of the parcel of land first described in subdivision 1 of paragraph VI of the complaint as amended was, at the date of the filing of the original complaint herein, the sum of $10,000.00.

II.

That the respective values of each of the remaining parcels of land described in said subdivision 1 of paragraph VI of the complaint as
317 amended were, at the time of the commencement of this action, respectively as follows, to-wit:

Parcel	No.	1	the	sum	of.....	$ 1.45
"	"	2	"	"	.....	2.38
"	"	3	"	"	.....	5.95
"	"	4	"	"	.....	8.40
"	"	5	"	"	.....	5.25
"	"	6	"	"	.....	12.25
"	"	7	"	"	.....	4.20
"	"	8	"	"	.....	22.40
"	"	9	"	"	.....	20.65
"	"	10	"	"	.....	11.90
"	"	11	"	"	.....	.98
"	"	12	"	"	.....	15.05
"	"	13	"	"	.....	11.90
"	"	14	"	"	.....	2.75
"	"	15	"	"	.....	4.90
"	"	16	"	"	.....	4.90
"	"	17	"	"	.....	2.17
"	"	18	"	"	.....	2.60

318

319	"	"	19	"	"	.....	1.05
	"	"	20	"	"	.....	10.20
	"	"	20-A	"	"	.....	17.85
							$169.18

III.

That the damage and detriment to the larger parcel of land of which the said parcels of land described in subdivision 1 of paragraph VI of said complaint as amended form a part by rea-
320 son of the taking of said parcels of land for the purposes alleged in said complaint as amended will not be less than the sum of $20,000.00.

Wherefore, this defendant prays that plaintiff take nothing as against her, and that she recover her costs; or, in the event said land of this defendant is condemned and taken, that she have and recover the sum of $30,169/18 as damages, and her costs of suit.

321 ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendant.

Duly verified.

Endorsed: Received copy of the within amended answer this 25 day of Sept., 1918. A. J. Hill, Paul Vallee, attorney for plaintiff.

Filed Sep. 25, 1918. H. J. Lelande, clerk; by F. J. Adams, deputy.

322 [TITLE OF COURT AND CAUSE.]

Amended Answer of Defendants Rindge Company.

Now comes Rindge Company, one of the defendants in the above-entitled action, and by leave of the court first had and obtained files this, its amended answer to the complaint of plaintiff therein as amended, and says:

I.

323 That it admits the allegations of paragraph I of said complaint.

II.

That it has not sufficient knowledge, information or belief or either to enable it to answer paragraph II of said complaint, and, therefore, it denies generally and specifically, all and singular, each and every of the said allegations, and the whole thereof.

III.

324 That it denies that it is necessary for county purposes, or for any purpose or purposes whatever, or at all, or that the public or any interest or convenience or necessity or either requires the acquisition of an or any easement in or over the properties, or any part or portion thereof, described in paragraph II of the said complaint for the establishment or maintenance of a public or any highway either as prayed for in said complaint, or otherwise, or at all.

325 IV.

That it denies that it is necessary to acquire said or any easement in or over any part or portion of the lands, or the pieces or parcels of land, or in or over any part or portion of either or any of them, described in paragraph II of said complaint, or in the alleged resolution set forth in paragraph II of said complaint;

That it denies, according to its information and belief, that none of the property described
326 in paragraph II of said complaint and sought to be condemned in this action has heretofore, or prior to the commencement of this action, been appropriated to any public use;

That it denies that there is any public use sought in this action for which said, or any part of said, lands can be condemned, or to which they, or any part of them, can be subjected; and it denies that the alleged and attempted public
327 use attempted to be set forth and alleged in said complaint is located by the taking of said, or any part or portion of said, lands in the manner, or in any manner, which will be most, or at all, compatible with the greatest or any public good, or any good whatever, or with the least private injury.

V.

That it denies, according to its information and belief, that all of the persons whose names are set forth in the title of this action are own-

328 ers or claimants of the property sought to be condemned herein, or of any part or portion thereof.

VI.

That it admits and alleges that May K. Rindge is the owner in fee absolute of the parcels of land first described and ending with parcel 20-A in subdivision 1 of paragraph VI of said complaint, and of each and all of them, and that said parcels of land include only a part of
329 an entire tract of land owned by said defendant May K. Rindge, which is also described in subdivision 1 of paragraph VI of said complaint;

That it denies, according to its information and belief, that the defendants Pacific Mutual Life Insurance Company of California, a corporation; Pacific Mutual Life Insurance Company, a corporation; Samuel K. Rindge, Rhoda Rindge Adamson and Merritt H. Adamson have, or that either of them has, any interest whatever
330 of any kind or character either as alleged in said complaint, or otherwise, or at all, in or to any part or portion of the lands set forth and described in subdivision 1 of paragraph VI of said complaint, and alleged to be the property of said defendant May K. Rindge;

That it admits that the lands described in paragraph II of said complaint embrace the various parcels of land described in subdivision 2 of paragraph VI of said complaint, ending

331 with parcel No. 146 thereof, and that said last mentioned parcels of land include only a part of an entire tract owned by this defendant, Rindge Company, which is also described in subdivision 2 of paragraph VI of said complaint, and that said parcels described in subdivision 2 of paragraph VI of the complaint are the property of and are owned by this defendant;

That it denies, according to its information and belief, that the defendants Henry W. Keller,
332 Samuel K. Rindge, the defendant May K. Rindge (other than as a stockholder in the Rindge Company), Rhoda Rindge Adamson, or Merritt H. Adamson, have, or that either of them has, any interest whatever of any kind or character either as alleged in said complaint, or otherwise, or at all, in or to any part or portion of the lands set forth and described in subdivision 2 of paragraph VI of said complaint, and
333 therein alleged to be the property of this defendant, Rindge Company.

VII.

That it admits the allegations of paragraph VII of said complaint.

VIII.

That it has not sufficient knowledge, information or belief, or either, to enable it to answer the allegations of paragraph VIII of said complaint and, therefore, it denies generally and

334 specifically, all and singular, each and every of the said allegations, and the whole thereof.

IX.

~~That it denies, according to its information and belief, that the map filed herein by way of amendment to said complaint and marked Exhibit "A" correctly delineates the parcels of land sought to be condemned herein: but just to what extent it is deficient and incorrect in these regards this defendant has not sufficient knowl-~~

335 ~~edge, information or belief to aver.~~

[Stricken out by order of court Tuesday, Oct. 1, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.]

And as another and further and separate answer and defense herein defendant alleges:

That it is informed and believes, and upon its information and belief alleges, that there has been no consideration or determination by the board of supervisors of the county of Los An-

336 geles, state of California, of any of the matters or things alleged in the complaint herein as amended, and particularly of the matters or things alleged in paragraph II of said complaint as amended, and that the said alleged resolution referred to in paragraph II of the said complaint as amended was arbitrarily adopted by the said board of supervisors of Los Angeles county without any consideration of the matters or

337 things therein contained, and without the exercise of any discretion therein, and well knowing that there was no room for the exercise of any discretion therein, but on the contrary knowing full well that all of the property proposed to be taken for a public road and highway and to be condemned as in said resolution set forth and as in said complaint as amended alleged was not, and could not be, necessary for any public use of any kind or character whatever, and particu-
338 larly in this that it is located wholly and solely upon and within the confines of private property, and cannot under any circumstances afford any accommodation of any kind or character to the traveling public, or any part or portion thereof. and that, therefore, the taking of the same for any alleged highway purposes would be without due process of law, and in violation of the provisions of the fourteenth amendment to the Con-
339 stitution of the United States, and that the taking of said property under said resolution for public highway or other purposes would be void, and would be a denial to this defendant and the other owners of said property sought to be condemned of the equal protection of the laws under the Constitution of the United States, and would contravene the fourteenth amendment to the said Constitution of the United States.

340 And for another and further and separate answer and defense herein this defendant alleges:

I.

That the value of the parcel of land first described in subdivision 2 of paragraph VI of the complaint as amended was at the date of the filing of the original complaint herein the sum of $25,000.

II.

341 That the respective values of each of the remaining parcels of land described in said subdivision 2 of paragraph VI of the complaint as amended were at the time of the commencement of this action respectively as follows, to-wit:

Parcel	No.	21	the	sum	of.....	$ 5.25
"	"	21–A	"	"	.....	7.70
"	"	22	"	"	.....	1.22
"	"	23	"	"	.....	.49
"	"	24	"	"	.....	29.05
"	"	25	"	"	.....	33.95
"	"	26	"	"	.....	17.50
"	"	27	"	"	.....	21.35
"	"	28	"	"	.....	3.50
"	"	29	"	"	.....	.63
"	"	30	"	"	.....	8.40
"	"	31	"	"	.....	9.10
"	"	32	"	"	.....	8.75
"	"	33	"	"	.....	3.85
"	"	34	"	"	.....	86.45

342

343	"	"	35	"	"	.....	43.05
	"	"	36	"	"	.....	312.20
	"	"	37	"	"	.....	303.80
	"	"	38	"	"	.....	17.50
	"	"	39	"	"	.....	21.35
	"	"	40	"	"	.....	.42
	"	"	41	"	"	.....	.95
	"	"	42	"	"	.....	7.00
	"	"	43	"	"	.....	11.90
	"	"	44	"	"	.....	8.05
344	"	"	45	"	"	.....	1.89
	"	"	46	"	"	.....	2.41
	"	"	47	"	"	.....	1.50
	"	"	48	"	"	.....	.42
	"	"	49	"	"	.....	1.15
	"	"	50	"	"	.....	23.10
	"	"	51	"	"	.....	12.95
	"	"	52	"	"	.....	.73
	"	"	53	"	"	.....	.42
345							$1,007.98
						Fwd.	1,007.98
	Parcel	No.	54	the	sum	of..... $	.59
	"	"	55	"	"	"	.80
	"	"	56	"	"	"	22.75
	"	"	57	"	"	"	10.15
	"	"	58	"	"	"	.66
	"	"	59	"	"	"	.94
	"	"	60	"	"	"	.80
	"	"	61	"	"	"	10.85

346	"	"	62	"	"	"	..... .24
	"	"	63	"	"	"	..... 25.55
	"	"	64	"	"	"	..... 2.41
	"	"	65	"	"	"	..... 1.82
	"	"	66	"	"	"	..... 9.80
	"	"	67	"	"	"	..... 1.12
	"	"	68	"	"	"	..... 6.30
	"	"	69	"	"	"	..... 5.60
	"	"	70	"	"	"	..... 3.50
	"	"	71	"	"	"	..... 5.95
347	"	"	72	"	"	"	..... 1.71
	"	"	73	"	"	"	..... .91
	"	"	74	"	"	"	..... .80
	"	"	75	"	"	"	..... 7.00
	"	"	76	"	"	"	..... 2.41
	"	"	77	"	"	"	..... 5.95
	"	"	78	"	"	"	..... 3.18
	"	"	79	"	"	"	..... .49
	"	"	80	"	"	"	..... .91
348	"	"	81	"	"	"	..... 1.22
	"	"	82	"	"	"	..... .80
	"	"	83	"	"	"	..... .59
	"	"	84	"	"	"	..... .59
	"	"	85	"	"	"	..... .17
	"	"	86	"	"	"	..... 3.32
							$1,147.86
							$1,147.86
	Parcel No.		87	the sum of			.....$ 1.78
	"	"	88	"	"	"	..... 7.35

349	"	"	89	"	"	.....	.70
	"	"	90	"	"	.....	4.55
	"	"	91	"	"	.....	4.90
	"	"	92	"	"	.....	5.60
	"	"	93	"	"	.....	3.85
	"	"	94	"	"	.....	3.85
	"	"	95	"	"	.....	2.55
	"	"	96	"	"	.....	.80
	"	"	97	"	"	.....	9.45
	"	"	98	"	"	.....	17.85
350	"	"	98–A	"	"	.....	.38
	"	"	99	"	"	.....	9.10
	"	"	100	"	"	.....	2.66
	"	"	101	"	"	.....	2.45
	"	"	102	"	"	.....	9.45
	"	"	103	"	"	.....	2.00
	"	"	104	"	"	.....	3.50
	"	"	105	"	"	.....	1.64
	"	"	106	"	"	.....	1.15
351	"	"	107	"	"	.....	2.27
	"	"	108	"	"	.....	.77
	"	"	109	"	"	.....	.38
	"	"	110	"	"	.....	1.19
	"	"	111	"	"	.....	.80
	"	"	112	"	"	.....	.80
	"	"	113	"	"	.....	7.35
	"	"	114	"	"	.....	6.65
	"	"	115	"	"	.....	2.10
	"	"	116	"	"	.....	5.25

352	"	"	117	"	"	..... 6.30
	"	"	118	"	"	..... 3.25
						$1,280.53
						$1,280.53
	Parcel	No.	119	the sum of		..... $ 3.15
	"	"	120	"	"	..... .56
	"	"	121	"	"	..... 1.68
	"	"	122	"	"	..... .38
	"	"	123	"	"	..... .80
353	"	"	124	"	"	..... 1.92
	"	"	125	"	"	..... 1.29
	"	"	126	"	"	..... 5.60
	"	"	127	"	"	..... 3.04
	"	"	128	"	"	..... 9.45
	"	"	129	"	"	..... 9.10
	"	"	130	"	"	..... 3.80
	"	"	131	"	"	..... 2.41
	"	"	132	"	"	..... .80
	"	"	133	"	"	..... 17.50
354	"	"	134	"	"	..... 19.60
	"	"	135	"	"	..... 4.20
	"	"	136	"	"	..... 3.80
	"	"	137	"	"	..... .63
	"	"	138	"	"	..... 2.06
	"	"	139	"	"	..... 1.33
	"	"	140	"	"	..... 1.15
	"	"	141	"	"	..... .80
	"	"	142	"	"	..... .21
	"	"	143	"	"	..... .28

355	"	"	144	"	"	.....	2.00
	"	"	145	"	"	.....	7.70
	"	"	146	"	"	.....	6.65
							$1,392.42

III.

That the damage and detriment to the larger parcel of land of which the said parcels of land described in subdivision 2 of paragraph VI of said complaint as amended form a part by rea-
356 son of the taking of said parcels of land for the purposes alleged in said complaint as amended will not be less than the sum of $60,000.00.

And for another and further and separate answer and defense this defendant alleges:

I.

That all of the properties described in paragraphs II and VI of the complaint and in any way involved in this action are entirely upon and
357 within the boundaries of that certain ranch situate in the county of Los Angeles, state of California, commonly known as the Malibu Ranch.

II.

That while a portion of said Malibu Ranch is owned by the defendant May K. Rindge, and the remaining portion thereof by the defendant Rindge Company, the said ranch as a whole is now, and was at the commencement of this action, and for more than twenty years prior thereto had been, treated, operated, managed and

358 controlled as a single ranch under one joint management and control; and has at no time ever been severed or segregated into parts or parcels or treated or handled or manager by the owners thereof as other than a single ranch and holding.

III.

That said method of holding, managing and controlling said ranch by its said two owners has at all times been known tc the plaintiff and to
359 the public in general.

IV.

That said Malibu Ranch as such and under that name and designation and as embraced in the original purchase of the same by the defendant May K. Rindge, and the predecessor in interest of the defendant Rindge Company, at the point where the proposed road sought to be condemned herein terminates at the westerly
360 end of said road, ends at and upon the boundary line between the counties of Los Angeles and Ventura, state of California; but that the defendant Rindge Company is the owner and in the possession of, and was at the date of the commencement of this action, the owner and in the possession of property immediately adjacent thereto in the said county of Ventura, and forming a continuation into said county of Ventura for a distance of about 1¾ miles of the said ranch under the said joint management and

361 control of the said defendants May K. Rindge and Rindge Company.

V.

That there was not at the commencement of this action and is not now in the said county of Ventura at any point either contiguous to or upon any part or portion of said property of the Rindge Company or within 10 miles of the western, that is to say, the Ventura county, end of said ranch any public road of any kind or
362 character whatever; and that said ranch can be reached from said end only and wholly by private trails and ways.

VI.

That there was not at the commencement of this action, and is not now, any public road or way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles county, or upon that extension of the
363 same in Ventura county; and that the said proposed road or highway sought to be condemned and taken in this action would, if condemned and taken, be located wholly and solely upon that portion of the said Malibu Ranch situated in Los Angeles county, would end and terminate upon the private property of the defendant Rindge Company at the Ventura county line; would have no laterals or outlets or feeders of any kind or character; would be located wholly and solely upon, and give access wholly and

364 solely to, the private ranch property of the defendants May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

VII.

That neither of said defendants owners of and jointly managing and controlling said Malibu Ranch as a whole, has any need or desire for said or any public road upon said ranch or upon
365 any part or portion thereof; but that, on the contrary, any such public road would be a constant and continuous menace and damage to their said ranch property, and would largely destroy its value as a unit for ranch purposes; and would be and constitute a continual nuisance and expense to the said defendants.

VIII.

That by reason of the premises the taking of
366 any part or portion of said property as contemplated by the plaintiff and as prayed for in the complaint for road or highway purposes would be without necessity of any kind or right, and in contravention of the provisions of the Constitution of the United States, and particularly in violation of the fourteenth amendment to said Constitution, and would be void and without due process of law, and constitute a denial to the defendants May K. Rindge and Rindge Company of the equal protection of the laws

367 under the Constitution of the United States, and would contravene the said fourteenth amendment to said Constitution.

Wherefore, this defendant prays that plaintiff take nothing as against it, and that it recover its costs; or, in the event said land of this defendant is condemned and taken, that it have and recover the sum of $86,392/92 as damages, and its costs of suit.

368 ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendant.

Duly verified.

Endorsed: Received copy of the within amended answer this 25 day of Sept., 1918. A. J. Hill & Paul Vallee, attorney for plaintiff.

Filed Sep. 25, 1918. H. J. Lelande, clerk; by F. J. Adams, deputy.

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369 [TITLE OF COURT AND CAUSE.]

Disclaimer of Defendant H. W. Keller.

I hereby disclaim any right, title or interest in or to the property described in the complaint in the above entitled action and in any portion thereof.

Dated this 14 day of December, 1918.

H. W. KELLER,
Defendant.

370 Endorsed: Filed Dec. 16, 1918. H. J. Lelande, clerk; by F. D. Doyle, deputy.

[TITLE OF COURT AND CAUSE.]

Verdict Main Road Case.

1. What at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant May K. Rindge?

371 Answer. (Forty foot strip $2324.70
(
(Additional parcels $ 228.57
Total $2553.27

2. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant May K. Rindge?

Answer. $153.00

3. Will the remaining portion of defendant
372 May K. Rindge's land, not sought to be taken, be damaged by reason of the severance therefrom of the part which is sought to be taken?

Answer. Yes
(Yes or No)

4. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer. $1162.35

373 5. How many miles of fencing will it be necessary to construct on the property of defendant May K. Rindge by reason of the taking and use for public highway purposes of the land sought to be taken from defendant May K. Rindge? This question must be answered in the light of the concession of the plaintiff as to the necessity of a fence which I have quoted in the instructions given.

Answer. 6.6 miles

374 Six & 6/10 miles

6. What kind of fencing will be suitable to be constructed on the land of defendant May K. Rindge by reason of such taking and use of her land sought to be taken?

Answer. Thirty six inch woven wire with two barbed wires above with suitable posts.

7. What will be the cost of such fencing on the land of defendant May K. Rindge?

375 Answer. $550 00/" per mile

Or total of—$3630 do/"

8. What, at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant Rindge Company?

Answer. (Forty foot strip $6456.10

(Additional parcels $1278.77

Total $7734.87

376 9. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant Rindge Company?

Answer. $1234.50

10. Will the remaining portion of defendant Rindge Company's land, not sought to be taken, be damaged by reason of the severance therefrom of the part which is sought to be taken?

377 Answer. Yes

(Yes or No)

11. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer. $2696.00

12. How many miles of fencing will it be necessary to construct on the property of defendant Rindge Company by reason of the taking and use for public highway purposes of the
378 land sought to be taken from defendant Rindge Company?

Answer. 29——miles.

13. What kind of fencing will be suitable to be constructed on the land of defendant Rindge Company by reason of such taking and use of its land sought to be taken?

Answer. Thirty six inch woven wire with two barbed wires above with suitable posts.

14. What will be the cost of such fencing on the land of defendant Rindge Company?

379 Answer. $(650 00/") $18,850./00
(per mile)

15. What, at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant Hueneme, Malibu and Southern Railroad Company?

Answer. (Forty foot strip $59.06
(Additional parcels $ 7.69
Total $66.75

380 16. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant Hueneme, Malibu and Southern Railroad Company?

Answer. $—0

17. What, at said date, was the actual market value of the land sought to be taken from the defendant Hueneme, Malibu and Port Los
381 Angeles Railroad Company?

Answer. $—0

We, the jury, ascertain and assess the compensation to be paid to the several defendants herein in accordance with answers to the foregoing interrogatories.

JAS. A. WILLIAMS,
Foreman.

Endorsed: Filed Dec. 19, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.

382 [TITLE OF COURT AND CAUSE.]

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on the 30th day of September, 1918; A. J. Hill, county counsel; Charles S. Burnell, deputy county counsel, and Paul Vallee, deputy county counsel, appearing as counsel for the plaintiff and Messrs. Anderson and Anderson and Nathan Newby appearing as counsel for the defendants Rindge
383 Company, a corporation; May K. Rindge, a widow; Hueneme, Malibu and Southern Railway, a corporation, and Hueneme, Malibu and Port Los Angeles Railway, a corporation. Defendants Samuel K. Rindge, Frederick H. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson, Henry W. Keller, The Pacific Mutual Life Insurance Company, a corporation, and The Pacific Mutual Life Insurance Company of California, a corporation, duly filed herein their
384 respective disclaimers in writing, wherein they, and each of them, respectively, disclaim any right, title or interest in or to the property described in the complaint herein, or any portion thereof.

The defendant sued under the fictitious names of John Doe One, John Doe Two, John Doe Three, John Doe Four, John Doe Five, Mary Doe One, Mary Doe Two, Mary Doe Three, Mary Doe Four and Mary Doe Five, not having

385 been served with summons in said cause, the action was dismissed as to each and all of said defendants so sued under such fictitious names.

Whereupon a jury was regularly impaneled and sworn, and the cause was tried by the court without a jury as to all of the issues therein, except the issues as to the value of the property sought to be condemned and all improvements thereon pertaining to the realty, and the damage, if any, accruing to the lands of the defendants
386 or any of them, not sought to be condemned, by reason of the severance of such lands from the portions sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff the number of miles of fencing which it will be necessary to construct upon the property of the several defendants, respectively, by reason of the taking and use for public highway purposes of the lands sought
387 to be taken from them, the kind of fencing which will be suitable to be constructed on the lands of the said defendants by reason of such taking and use, and the cost of such fencing; and all of said last mentioned issues were submitted to trial before said jury.

A stipulation in writing was entered into by and between the plaintiff and the defendant Hueneme, Malibu and Port Los Angeles Railway, a corporation, that said defendant claims no damage for the taking of, or for damage by the

388 severance, or otherwise, to any of its property involved in the above entitled action, and that the jury might find in accordance with said stipulation.

The respective parties having introduced evidence, both oral and documentary, upon all of the issues submitted for trial by the court, counsel for the respective parties having been heard in argument thereon, and the said issues having been submitted to the court for its decision, the
389 court being fully advised as to the law and the premises, now finds as follows, to-wit:

I.

That all of the allegations contained in paragraph I of the complaint herein as amended, are true.

II.

That all of the allegations contained in paragraph II of said complaint herein are true.

390 III.

That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in and over the properties particularly described in paragraph II of the said complaint for the construction, establishment and maintenance of a public highway, as prayed in said complaint, and that the use to which the property sought to be taken is to be applied, is a use authorized by law.

391 IV.

That the lands in and over which it is necessary to acquire said easement are situate in the county of Los Angeles, state of California, and are those pieces and parcels of land more particularly described in the resolution referred to and set forth in paragraph II of the complaint herein.

That it is not true that none of the property described in the complaint herein and sought to
392 be condemned, has heretofore been appropriated to any public use, but that it is true that certain portions thereof have been deeded and dedicated, to the defendants Hueneme, Malibu and Port Los Angeles Railway, a corporation, and Hueneme, Malibu and Southern Railway, a corporation, respectively, as and for easements for rights of way for steam railroads running in and through more than one county in the state
393 of California, and located along, on and across portions of the lands described in paragraph II of the complaint herein, but in this behalf the court finds that the defendant Hueneme, Malibu and Port Los Angeles Railway, a corporation, did not, within two years after filing its original articles of incorporation, or at any other time, begin the construction of its road, or any portion thereof, and that the defendant Hueneme, Malibu and Southern Railway, a corporation, did not, within one year after beginning the

394 construction of its road, or ever, put in full, or in any operation, at least five miles, or any other portion of its road, nor have said corporations, or either of them, ever operated any railroad or railroads by the running thereover of any passenger, mixed or other trains for the carriage of the public, or baggage or freight, or for any other public purpose whatsoever.

The court further finds that the public use to which said property is to be applied is a more
395 necessary public use than that to which it has already, or heretofore been appropriated; and that the proposed public improvement is located, by the taking of said lands, in the manner which will be most compatible with the greatest public good and the least private injury.

V.

That all of the allegations contained in paragraph V of the complaint herein are true, but
396 that it is not true that all of the persons whose names are set forth in the title of this action are owners or claimants of the property sought to be condemned herein, or of any part or portion thereof, and in this behalf the court finds that the only persons whose names are set forth in the title of this action who are owners or claimants of the property sought to be condemned herein, or of any part of portion thereof, are the defendants Rindge Company, a corporation; May K. Rindge, a widow; Hueneme, Mal-

ibu and Port Los Angeles Railway, a corporation, and Hueneme, Malibu and Southern Railway, a corporation, and that said defendants are all of the owners of, or claimants to, said property, or any portion thereof.

VI.

That all of the allegations contained in paragraph VI of the complaint herein are true, except that it is not true that the defendants Henry W. Keller, The Pacific Mutual Life Insurance Company, a corporation; The Pacific Mutual Life Insurance Company of California, a corporation; Rhoda Rindge Adamson, Merritt H. Adamson and Samuel K. Rindge have, or that any of them has, any interest whatever, of any kind or character, in or to any part or portion of the land set forth and described in subdivision 1 of paragraph VI of the complaint herein, nor is it true that the defendants Henry W. Keller, Samuel K. Rindge, Rhoda Rindge Adamson, Merritt H. Adamson and May K. Rindge (other than as a stockholder in the defendant Rindge Company) have, or that either of said defendants has, any interest whatever, of any kind or character, in or to any part or portion of the land set forth and described in subdivision 2 of paragraph VI of said complaint.

VII.

That all of the allegations contained in paragraph VII of the complaint herein are true.

400 VIII.

That it is not true that the defendants sued by the fictitious names of John Doe One, John Doe Two, John Doe Three, John Doe Four, John Doe Five, Mary Doe One, Mary Doe Two, Mary Doe Three, Mary Doe Four and Mary Doe Five, have or claim, or that any of said defendants has, or claims, any interest in, or lien upon the lands described in paragraph II of the complaint herein, or in any part, portion
401 or parcel thereof.

IX.

That all of the allegations contained in paragraph IX of the complaint herein are true.

X.

That it is not true that there has been no consideration or determination of the board of supervisors of the county of Los Angeles of any of the matters or things alleged in said com-
402 plaint, and particularly of the matters or things alleged in paragraph II of said complaint, nor is it true that the resolution referred to in paragraph II of said complaint was arbitrarily adopted by said board of supervisors, without any consideration of the matters or things therein contained, or without the exercise of any discretion therein, or well knowing that there was no room for the exercise of any discretion therein, or that it was arbitrarily adopted at all, nor is it true that said resolution was

adopted by said board of supervisors knowing full well, or otherwise, that all, or that any of the property proposed to be taken for a public road and highway, and to be condemned, as in said resolution set forth and as in the complaint alleged, was not, and could not be necessary for any public use of any kind or character whatever, and cannot, under any circumstances, afford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that the taking of same for said highway purposes would be without due process of law or in violation of the provisions of the fourteenth amendment to the Constitution of the United States, or that the taking of said property under said resolution for public highway or other purposes, would be void, or would be a denial to the defendants, or to any or either of them, of the equal protection of the laws under the Constitution of the United States, and would contravene the fourteenth, or any amendment to said Constitution, and in this behalf the court finds that it is true that the property proposed to be taken for a public road and highway, and sought to be condemned herein, is located wholly and solely upon and within the confines of private property, except that the easterly end of the strip of land sought to be taken terminates at, and will be in continuation of, a public highway now, and prior to the com-

406 mencement of this action, existing; and the court further finds that the highway sought to be established and maintained over and upon the land sought to be taken, and for the purpose of which the taking is sought, will afford accommodation to the traveling public.

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing facts, the court finds as follows:

407 I.

That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in and over the property particularly described in the amended complaint in paragraph number II thereof, for the construction, establishment and maintenance of a public highway.

II.

That the use to which the property sought to
408 be taken is to be applied, is a use authorized by law.

III.

That the public use to which said property is to be applied is a more necessary use than that to which certain portions of it have already been appropriated.

IV.

That the plaintiff is entitled to an interlocutory judgment adjudging that upon payment to

the respective defendants herein, or into court for their benefit, or the amounts adjudged by the jury herein to be due to them respectively as compensation for the land so sought to be condemned, as damage to the land not sought to be condemned by reason of the severance therefrom of the land sought to be condemned, and for the construction of fencing, that the respective parcels of property, as set forth in said complaint herein, sought to be taken by this action, be condemned to the use of the plaintiff herein for public highway purposes, namely, for the construction, establishment and maintenance thereon and thereover of a public highway, as prayed in said complaint herein.

V.

That the several defendants have and recover of and from the plaintiff their respective costs.

Let judgment be entered accordingly.

Dated this 30th day of January, 1919.

PAUL J. MCCORMICK,
Judge of the Superior Court.

Endorsed: Received copy of the within findings this 24 day of January, 1919. Anderson & Anderson, Nathan Newby, attorneys for certain defendants.

Filed Jan. 30, 1919. H. J. Lelande, clerk; by E. C. Polsue, deputy.

412 [TITLE OF COURT AND CAUSE.]

Interlocutory Judgment in Condemnation.

The above entitled cause came on regularly for trial before the court without a jury as to all of the issues except the issues as to the value of the property sought to be condemned and all improvements thereon pertaining to the realty, the damage, if any, to accrue to the lands of the defendants, or any of them not sought to be
413 condemned by reason of the severance of such lands from the portion sought to be condemned, and the construction of the improvement in the manner proposed by plaintiff, the number of miles of fencing which it will be necessary to construct upon the property of the defendants, respectively, by reason of such taking and use, and the cost of such fencing, and all of said last mentioned issues were submitted to trial before
414 a jury regularly impaneled and sworn.

And the court, having found upon all of the issues so submitted to it, and having made its findings of fact and conclusions of law upon said issues, and the issue last above enumerated having been submitted to such trial by a jury and evidence both oral and documentary having been introduced by the respective parties and the cause having been argued by counsel for said parties, and the court having given its instructions in writing, the jury retired to con-

415 sider the same and their verdict, and subsequently returned into court and being called, answered to their names and rendered their verdict upon said issues as follows:

1. What at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant May K. Rindge?

Answer. (Forty foot strip $2324.70

(

416 (Additional parcels $ 228.57

Total $2553.27

2. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant May K. Rindge?

Answer. $153.00

3. Will the remaining portion of defendant May K. Rindge's land, not sought to be taken, be damaged by reason of the severance there-
417 from of the part which is sought to be taken?

Answer. Yes.

4. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer. $1162.35

5. How many miles of fencing will it be necessary to construct on the property of defendant May K. Rindge by reason of the taking and use for public highway purposes of the land

418 sought to be taken from defendant May K. Rindge? This question must be answered in the light of the concession of the plaintiff as to the necessity of a fence which I have quoted in the instructions given.

Answer. Six and 6/10 miles.

6. What kind of fencing will be suitable to be constructed on the land of defendant May K. Rindge by reason of such taking and use of her land sought to be taken?

419 Answer. Thirty six inch woven wire with two barbed wires above with suitable posts.

7. What will be the cost of such fencing on the land of defendant May K. Rindge?

Answer. $550.00 per mile, or total—$3630.00

8. What, at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant Rindge Company?

420 Answer. (Forty foot strip $6456.10
(Additional parcels $1278.77
Total $7734.87

9. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant Rindge Company?

Answer. $1234.50

10. Will the remaining portion of defendant Rindge Company's land, not sought to be taken,

421 be damaged by reason of the severance therefrom of the part which is sought to be taken?

Answer. Yes.

11. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer. $2696.00

12. How many miles of fencing will it be necessary to construct on the property of defendant Rindge Company by reason of the tak-
422 ing and use for public highway purposes of the land sought to be taken from defendant Rindge Company?

Answer 29 miles.

13. What kind of fencing will be suitable to be constructed on the land of defendant Rindge Company by reason of such taking and use of its land sought to be taken?

Answer. Thirty six inch woven wire with
423 two barbed wires above, with suitable posts.

14. What will be the cost of such fencing on the land of defendant Rindge Company?

Answer. $650.00 per mile—$18,850.00

15. What, at the date of the trial, September 30th, 1918, was the actual market value of the land sought to be taken from defendant Hueneme, Malibu and Southern Railroad Company?

Answer. (Forty foot strip $59.06
(
(Additional parcels $ 7.69
Total $66.75

424 16. What, at said date, was the actual market value of the improvements pertaining to the realty on the land sought to be taken from defendant Hueneme, Malibu and Southern Railroad Company?

Answer. $ 00.00

17. What, at said date, was the actual market value of the land sought to be taken from the defendant Hueneme, Malibu and Port Los An-
425 geles Railroad Company?

Answer. $ 00.00

And it appearing to the court that a stipulation has heretofore been entered into by and between the plaintiff and the defendant Hueneme, Malibu and Port Los Angles Railway, a corporation, that said defendant claims no damage for the taking of, or for damage by severance or otherwise, to any of its property involved in the above entitled action, and that the jury in the above
426 entitled action may find in accordance with this stipulation; and it further appearing to the court that a stipulation has heretofore been entered into by and between the plaintiff and all of the defendants appearing and answering herein, which stipulation provides as follows:

"First: That the judgment in the above entitled cause need not be entered within twenty-four (24) hours after the rendition of the verdict, but that such judgment may be entered upon or after the filing of the findings of fact

and conclusions of law by the court in the same manner as in cases tried by the court without a jury;

"Second: That the memorandum of costs and disbursements need not be served or filed within five (5) days after the verdict, but that the same may be served and filed within five (5) days after notice that the findings of fact and conclusions of law made by the court have been filed."

Now, therefore, by reason of the law and the premises and the findings and conclusions of the court, and the said verdict, it is hereby ordered, adjudged and decreed, that upon payment by plaintiff County of Los Angeles to the defendants Rindge Company, a corporation, May K. Rindge and Hueneme, Malibu and Southern Railway, a corporation, or upon deposit in court by said plaintiff for said defendants, respectively, of the moneys assessed in said verdict as the values of the parcels of land taken by plaintiff from the said defendants, respectively, and hereinafter described, and for the damages assessed as accruing to the remainder of the lands of the defendants, or any of them by reason of their severance from the parts taken, and for the cost of constructing fencing upon the lands of the respective defendants, amounting in the aggregate to be paid to the defendant Rindge Company, a corporation, to the sum of

430 $30,515.37 and costs; and in the aggregate to be paid to the defendant May K. Rindge to the sum of $7,498.62 and costs; and in the aggregate to be paid to the defendant Hueneme, Malibu and Southern Railway, a corporation, to the sum of $66.75 and costs; within thirty days after the entry of this judgment, according to law, the plaintiff take the lands hereinafter described for the purposes alleged in the plaintiff's said complaint herein, and that final judgment
431 for the said property for the public use in the manner proposed by the plaintiff be made and entered according to the law.

It is further ordered, adjudged and decreed that the defendants have and recover from the plaintiff their costs herein, taxed as follows:

Costs of defendant Rindge Company, a corporation, $2,397.38

Costs of defendant May K. Rindge; $.....

432 Costs of defendant Hueneme, Malibu and Southern Railway, a corporation, $.....

The following is a description of the lands condemned in this action, and herein referred to:

Lands of defendant May K. Rindge: All that real property situated in the county of Los Angeles, state of California, and bounded and more particularly described as follows, to-wit:

(Description.)

433 Reference is hereby made to county surveyor's map No. 8070 on which the location of the above described strip of land is accurately shown, said map being on file in the office of the surveyor of Los Angeles county.

Also the following described parcels of land, being in division 1 of said Malibu road, as shown on said county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county.

434

Parcel No. 1.
(Description.)

Parcel No. 2.
(Description.)

Parcel No. 3.
(Description.)

Parcel No. 4.
(Description.)

Parcel No. 5.
435 (Description.)

Parcel No. 6.
(Description.)

Parcel No. 7.
(Description.)

Parced No. 8.
(Description.)

Parcel No. 9.
(Description.)

Parcel No. 10.
(Description.)

436 Parcel No. 11.
(Description.)

Parcel No. 12.
(Description.)

Parcel No. 13.
(Description.)

Parcel No. 14.
(Description.)

Parcel No. 15.
437 (Description.)

Parcel No. 16.
(Description.)

Parcel No. 17.
(Description.)

Parcel No. 18.
(Description.)

Parcel No. 19.
(Description.)

438 Parcel No. 20.
(Description.)

Parcel No. 20-A.
(Description.)

Also the following described parcels of land, being in division 1 of said Malibu Road as shown on said county surveyor's map No. 8070 on file in the office of surveyor of Los Angeles county.

Parcel No. 21.
(Description.)

439 Parcel No. 21-A.
(Description.)

Parcel No. 22.
(Description.)

Parcel No. 23.
(Description.)

Parcel No. 24.
(Description.)

Parcel No. 25.
(Description.)

440 Parcel No. 26.
(Description.)

Parcel No. 27.
(Description.)

Parcel No. 28.
(Description.)

Parcel No. 29.
(Description.)

Parcel No. 30.
441 (Description.)

Parcel No. 31.
(Description.)

Parcel No. 32.
(Description.)

Parcel No. 33.
(Description.)

Parcel No. 34.
(Description.)

Parcel No. 35.
(Description.)

442 Also the following described parcels of land, being in division 1 and division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 36.
(Description.)

Parcel No. 37.
(Description.)

443 Also the following described parcels of land, being in division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 38.
(Description.)

Parcel No. 39.
(Description.)

Parcel No. 40.
(Description.)

444 Parcel No. 41.
(Description.)

Parcel No. 42.
(Description.)

Parcel No. 43.
(Description.)

Parcel No. 44.
(Description.)

Parcel No. 45.
(Description.)

Parcel No. 46.
(Description.)

445 Also the following described parcels of land, being in division 3, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 47.
(Description.)

Parcel No. 48.
(Description.)

Parcel No. 49.
(Description.)

446

Parcel No. 50.
(Description.)

Parcel No. 51.
(Description.)

Parcel No. 52.
(Description.)

Parcel No. 53.
(Description.)

Parcel No. 54.
447 (Description.)

Parcel No. 55.
(Description.)

Parcel No. 56.
(Description.)

Parcel No. 57.
(Description.)

Parcel No. 58.
(Description.)

Parcel No. 59.
(Description.)

448 Parcel No. 60.
(Description.)

Parcel No. 61.
(Description.)

Parcel No. 62.
(Description.)

Parcel No. 63.
(Description.)

Parcel No. 64.
(Description.)

449 Parcel No. 65.
(Description.)

Parcel No. 66.
(Description.)

Parcel No. 67.
(Description.)

Also the following described parcels of land, being in division 4, Malibu Road, as shown on county surveyor's map No. 8070, on file in the
450 office of the surveyor of Los Angeles county.

Parcel No. 68.
(Description.)

Parcel No. 69.
(Description.)

Parcel No. 70.
(Description.)

Parcel No. 71.
(Description.)

Parcel No. 72.
(Description.)

451 Parcel No. 73.
(Description.)

Parcel No. 74.
(Description.)

Parcel No. 75.
(Description.)

Parcel No. 76.
(Description.)

Parcel No. 77.
(Description.)

452 Parcel No. 78.
(Description.)

Also all the following described parcels of land, being in division 5, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 79.
(Description.)

Parcel No. 80.
453 (Description.)

Parcel No. 81.
(Description.)

Parcel No. 82.
(Description.)

Parcel No. 83.
(Description.)

Parcel No. 84.
(Description.)

ParcelNo. 85.
(Description.)

454 Parcel No. 86.
(Description.)

Parcel No. 87.
(Description.)

Parcel No. 88.
(Description.)

Parcel No. 89.
(Description.)

Parcel No. 90.
(Description.)

455 Parcel No. 91.
(Description.)

Parcel No. 92.
(Description.)

Also all the following described parcels of land, being in division 6, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

456 Parcel No. 93.
(Description.)

Parcel No. 94.
(Description.)

Parcel No. 95.
(Description.)

Also all the following described parcels of land, being in division 7, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

457 Parcel No. 96.
(Description.)

Parcel No. 97.
(Description.)

Parcel No. 98.
(Description.)

Parcel No. 98a.
(Description.)

Parcel No. 99.
(Description.)

458 Parcel No. 100.
(Description.)

Parcel No. 101.
(Description.)

Parcel No. 102.
(Description.)

Parcel No. 103.
(Description.)

Parcel No. 104.
(Description.)

459 Parcel No. 105.
(Description.)

Parcel No. 106.
(Description.)

Parcel No. 107.
(Description.)

Parcel No. 108.
(Description.)

Parcel No. 109.
(Description.)

460 Parcel No. 110.
(Description.)

Parcel No. 111.
(Description.)

Parcel No. 112.
(Description.)

Parcel No. 113.
(Description.)

Parcel No. 114.
(Description.)

461 Parcel No. 115.
(Description.)

Parcel No. 116.
(Description.)

Parcel No. 117.
(Description.)

Parcel No. 118.
(Description.)

Parcel No. 119.
(Description.)

462 Parcel No. 120.
(Description.)

Parcel No. 121.
(Description.)

Parcel No. 122.
(Description.)

Parcel No. 123.
(Description.)

Parcel No. 124.
(Description.)

463 Parcel No. 125.
(Description.)

Parcel No. 126.
(Description.)

Parcel No. 127.
(Description.)

Parcel No. 128.
(Description.)

Parcel No. 129.
(Description.)

464 Parcel No. 130.
(Description.)

Parcel No. 131.
(Description.)

Parcel No. 132.
(Description.)

Parcel No. 133.
(Description.)

Parcel No. 134.
465 (Description.)

Parcel Uo. 135.
(Description.)

Parcel No. 136.
(Description.)

Also all the following described parcels of land, being in division 8, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 137.
(Description.)

466 Parcel No. 138.
(Description.)

Parcel No. 139.
(Description.)

Parcel No. 140.
(Description.)

Parcel No. 141.
(Description.)

Parcel No. 142.
(Description.)

467 Parcel No. 143.
(Description.)

Parcel No. 144.
(Description.)

Parcel No. 145.
(Description.)

Parcel No. 146.
(Description.)

Further reference is hereby made to said
468 county surveyor's map No. 8070 on which the location of all parcels of land herein described is accurately shown.

Lands of defendant Hueneme, Malibu and Southern Railway, a corporation:

All those portions of the right of way granted to said defendant by deed recorded February 2, 1916, in the office of the county recorder of Los Angeles county in book 6216 of deeds, at page 92 thereof, bounded and more particularly described as follows, to-wit:

469 Those portions of that certain strip of land, sixty feet in width, deeded to the Hueneme, Malibu and Southern Railway by deed recorded in book 6216, page 92 *et seq.* of deeds, records of Los Angeles county, which lie easterly of the westerly line of that certain parcel of land deeded to May K. Rindge by deed recorded in book 766, page 221 of deeds, records of said county, and are bounded and described as follows:

470 First: Beginning at the intersection of the southerly line of the aforesaid sixty foot strip of land deeded to the Hueneme, Malibu and Southern Railway, with the easterly line of Rancho Topanga Malibu Sequit, as shown on map recorded in book 1, pages 414 *et seq.* of patents, records of said county; thence westerly, along the southerly line of said sixty foot strip of land, to an angle point in the northerly line
471 of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road, as shown on county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county, said angle point being opposite station 3+25.65, in division No. 1, of said located center line; thence easterly, along the northerly line of said forty foot strip of land, to the southwest corner of parcel No. 1 as shown on said county surveyor's map No. 8070; thence northerly, easterly, northerly and

472 easterly along the various courses of the boundary of said parcel No. 1 to the easterly line of said Rancho Topanga Malibu Sequit; thence southeasterly along said rancho line, to the point of beginning.

Second: Beginning at an angle point in the northerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road, as shown
473 on the aforesaid county surveyor's map No. 8070, said angle point being opposite station 116+12.18, in division No. 1, of said located center line, said point of beginning also being in the southerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence westerly, along the southerly line of said sixty foot strip of land, to the southerly line of the aforesaid forty foot strip of land; thence westerly, along the
474 southerly line of said forty foot strip of land, to the northeast corner of parcel No. 5, as shown on the aforesaid county surveyor's map No. 8070; thence southerly and westerly, along the easterly and southerly lines of said parcel No. 5, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence easterly, along the northerly line of said sixty foot strip of land, to the northerly line of the aforesaid forty foot strip of land; thence easterly along

475 the northerly line of said forty foot strip of land, to the point of beginning.

Third: Beginning at the northeast corner of parcel No. 10, as shown on the aforesaid county surveyor's map No. 8070, said point of beginning being in the southerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of Malibu road, as shown on said map; thence easterly
476 along the southerly line of said forty foot strip of land, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence westerly, along the northerly line of said sixty foot strip of land, to the southerly line of the aforesaid parcel No. 10; thence easterly, northerly, easterly and northerly, along the various courses of the boundary of said parcel No. 10, to the point of beginning.

477 Those portions of that certain strip of land, sixty feet in width, deeded to the Hueneme, Malibu and Southern Railway by deed recorded in book 6216, page 92 *et seq.* of deeds, records of Los Angeles county; which lie westerly of the westerly line of that certain parcel of land deeded to May K. Rindge, by deed recorded in book 766, page 221 of deeds, records of said county, and are bounded and described as follows:

First: All of parcel No. 87 as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Second: All of parcel No. 89 as shown on the aforesaid county surveyors' map No. 8070.

Third: That portion of parcel No. 90 as shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty foot strip of land deeded to the Hueneme, Malibu and Southern Railway.

Fourth: Beginning at a point in the southerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road as shown on the aforesaid county surveyor's map No. 8070, said point of beginning being opposite station 388+61.90, in division No. 6, of said located center line; thence westerly, along the southerly line of said forty foot strip of land, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence easterly along the northerly line of said sixty foot strip of land, to the southerly line of the aforesaid forty foot strip of land; thence westerly along the southerly line of said forty foot strip of land, to the point of beginning.

Fifth: That portion of parcel No. 97 as shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty

481 foot strip of land, deeded to the Hueneme, Malibu and Southern Railway.

Sixth: That portion of parcel No. 142 as shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway.

Seventh: All of parcel No. 144 as shown on the aforesaid county surveyor's map No. 8070.

Done in open court this 5th day of February,
482 1919.

PAUL J. McCORMICK,
Judge of the Superior Court.

Endorsed: Filed Feb. 5, 1919. H. J. Lelande, clerk; by E. A. Wickersham, deputy.

Docketed Feb. 11, 1919; entered Feb. 11, 1919; book 431, page 152; by H. Moore, deputy.

[TITLE OF COURT AND CAUSE.]

483

Clerk's Certificate to Judgment Roll.

I, H. J. Lelande, county clerk of the county of Los Angeles, state of California, and *ex-officio* clerk of the Superior Court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and recorded in judgment book 431 of said court, at page 152. And I further certify that the foregoing papers, hereto an-

484 nexed, constitute the judgment roll in said action.

Witness my hand and the seal of said Superior Court this Feb. 11, 1919.

(Seal) H. J. LELANDE, *Clerk*.

By W. B. HITCHCOCK, *Deputy*.

Judgment roll filed and entered Feb. 11, 1919, in book 431, page 152. H. J. Lelande, clerk; by W. B. Hitchcock, deputy.

485

[TITLE OF COURT AND CAUSE.]

Final Order of Condemnation.

It appearing to the satisfaction of the court that the plaintiff in the above entitled action has deposited with H. J. Lelande, county clerk of Los Angeles county and *ex-officio* clerk of the Superior Court of said county, for the defendants herein, as required by that certain interlocu-

486 tory judgment of condemnation made and filed in the above entitled cause on the 5th day of February, 1919, and recorded in book 431 of judgments, page 152, records of the clerk of the above entitled court, as follows:

The sum of $30,515.37 and costs in the sum of $2,381.38 for the defendant Rindge Company, a corporation;

The sum of $7,498.62 for the defendant May K. Rindge; and

487 The sum of $66.75 for the defendant Hueneme, Malibu & Southern Railway Company, a corporation; and

The court having, on the 3rd day of April, 1919, made and filed with the clerk of the court an order in words following, to-wit:

"Defendants' motion for a new trial herein is denied except as to the issue of suitable fences, which issue was under a stipulation and conces-
488 sion submitted to the jury herein. Under this concession it was the duty of the jury to have found that no less than 31.5 miles of fencing was necessary on the land and property of defendant Rindge Company, a corporation, and inasmuch as the jury failed to so find, a new trial on the issue of necessary suitable fences will be ordered unless within two (2) days from this date the plaintiffs herein file with the clerk of this court consent in writing to the allow-
489 ance of 31 5/10 miles of fencing at the rate and of the kind found by the jury herein. If such written consent is filed as aforesaid, the motion of defendant for a new trial is denied *in toto*.

Apr. 3, 1919.

(Signed) PAUL J. MCCORMICK, J."

And

It further appearing to the satisfaction of the court that on the 5th day of April, 1919, the plaintiff County of Los Angeles filed a stipula-

490 tion and election with the clerk of the court in words following, to-wit:

"Plaintiff County of Los Angeles hereby stipulates, agrees and consents to the allowance of 31.5 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, at the rate of $650 per mile, as necessary on the land and property of the defendant Rindge Company, a corporation, by reason of the taking and use for public highway purposes of the land sought to
491 be taken from the defendant Rindge Company, and hereby stipulates and agrees to deposit with the clerk of the court for the defendant Rindge Company in addition to the amounts heretofore deposited, the sum of $1625.

Plaintiff County of Los Angeles hereby stipulates, agrees and elects to build and construct 6.6 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, on the
492 property of the defendant May K. Rindge, as specified in the verdict of the jury in the above entitled action, which are the fences for which damages have been assessed in said action, in favor of defendant May K. Rindge; and

Plaintiff County of Los Angeles hereby stipulates, agrees and elects to build and construct 31.5 miles of 36 inch woven wire fence, with two barb wires above, and suitable posts, on the property of the defendant Rindge Company, a corporation, as specified by the verdict of the

493 jury and the order denying the motion for a new trial in the above entitled action, which are the fences for which damages have been assessed in said action, in favor of defendant Rindge Company.

Dated Los Angeles, California, Apr. 4, 1919.

A. J. HILL,
County Counsel;
C. S. BURNELL,
Deputy County Counsel;
494 PAUL VALLEE,
Deputy County Counsel,
Attorneys for Plaintiff.

It is hereby ordered that the plaintiff have ten days from the date hereof in which to deposit with the clerk of the court the sum of $1625, being the amount necessary to build 2.5 miles of fencing under the verdict of the jury in the above entitled action, which is the number of
495 miles consented by the plaintiff to be allowed in addition to the number of miles found necessary by the jury.

Dated Los Angeles, California, April 4th, 1919.

PAUL J. MCCORMICK,
Judge."

And it further appearing to the court that on the 14th day of April, 1919, plaintiff County of Los Angeles, in compliance with said order made

496 and filed on the 3rd day of April, 1919, and in compliance with said stipulation and election filed on the 5th day of April, 1919, did deposit with H. J. Lelande, county clerk of Los Angeles county and *ex-officio* clerk of the Superior Court of said county, for the defendant Rindge Company the further sum of $1625;

Now, therefore, on motion of A. J. Hill, county counsel; Charles S. Burnell, deputy
497 county counsel, and Paul Vallee, deputy county counsel, attorneys for plaintiff, it is ordered, adjudged and decreed that the parcels of land hereinafter described be, and the same are hereby condemned for public highway purposes.

Said parcels of land so condemned for public highway purposes are more particularly described as follows:

Lands of defendant May K. Rindge: All that real property situated in the county of Los
498 Angeles, state of California, and bounded and more particularly described as follows, to-wit:

(Description.)

Reference is hereby made to county surveyor's map No. 8070 on which the location of the above described strip of land is accurately shown, said map being on file in the office of the surveyor of Los Angeles county.

Also the following described parcels of land, being in division 1 of said Malibu road, as

499 shown on said county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county.

Parcel No. 1.
(Description.)

Parcel No. 2.
(Description.)

Parcel No. 3.
(Description.)

500 Parcel No. 4.
(Description.)

Parcel No. 5.
(Description.)

Parcel No. 6.
(Description.)

Parcel No. 7.
(Description.)

Parcel No. 8.
(Description.)

501 Parcel No. 9.
(Description.)

Parcel No. 10.
(Description.)

Parcel No. 11.
(Description.)

Parcel No. 12.
(Description.)

Parcel No. 13.
(Description.)

502 Parcel No. 14.
(Description.)

Parcel No. 15.
(Description.)

Parcel No. 16.
(Description.)

Parcel No. 17.
(Description.)

Parcel No. 18.
(Description.)

503 Parcel No. 19.
(Description.)

Parcel No. 20.
(Description.)

Parcel No. 20-A.
(Description.)

Also the following described parcels of land, being in division 1 of said Malibu Road as shown on said county surveyor's map No. 8070
504 on file in the office of surveyor of Los Angeles county.

Parcel No. 21.
(Description.)

Parcel No. 21-A.
(Description.)

Parcel No. 22.
(Description.)

Parcel No. 23.
(Description.)

505 Parcel No. 24.
(Description.)

Parcel No. 25.
(Description.)

Parcel No. 26.
(Description.)

Parcel No. 27.
(Description.)

Parcel No. 28.
(Description.)

506 Parcel No. 29.
(Description.)

Parcel No. 30.
(Description.)

Parcel No. 31.
(Description.)

Parcel No. 32.
(Description.)

Parcel No. 33.
507 (Description.)

Parcel No. 34.
(Description.)

Parcel No. 35.
(Description.)

Also the following described parcels of land, being in division 1 and division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

508 Parcel No. 36.
(Description.)
Parcel No. 37.)
(Description.)

Also the following described parcels of land, being in division 2, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 38.
(Description.)

509 Parcel No. 39.
(Description.)

Parcel No. 40.
(Description.)

Parcel No. 41.
(Description.)

Parcel No. 42.
(Description.)

Parcel No. 43.
510 (Description.)

Parcel No. 44.
(Description.)

Parcel No. 45.
(Description.)

Parcel No. 46.
(Description.)

Also the following described parcels of land, being in division 3, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

511 Parcel No. 47.
(Description.)

Parcel No. 48.
(Description.)

Parcel No. 49.
(Description.)

Parcel No. 50.
(Description.)

Parcel No. 51.
(Description.)

512 Parcel No. 52.
(Description.)

Parcel No. 53.
(Description.)

Parcel No. 54.
(Description.)

Parcel No. 55.
(Description.)

Parcel No. 56.
513 (Description.)

Parcel No. 57.
(Description.)

Parcel No. 58.
(Description.)

Parcel No. 59.
(Description.)

Parcel No. 60.
(Description.)

Parcel No. 61.
(Description.)

514 Parcel No. 62.
(Description.)

Parcel No. 63.
(Description.)

Parcel No. 64.
(Description.)

Parcel No. 65.
(Description.)

Parcel No. 66.
(Description.)

515 Parcel No. 67.
(Description.)

Also the following described parcels of land, being in division 4, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 68.
(Description.)

Parcel No. 69.
516 (Description.)

Parcel No. 70.
(Description.)

Parcel No. 71.
(Description.)

Parcel No. 72.
(Description.)

Parcel No. 73.
(Description.)

Parcel No. 74.
(Description.)

517 Parcel No. 75.
(Description.)

Parcel No. 76.
(Description.)

Parcel No. 77.
(Description.)

Parcel No. 78.
(Description.)

Also all the following described parcels of land, being in division 5, Malibu Road, as shown
518 on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 79.
(Description.)

Parcel No. 80.
(Description.)

Parcel No. 81.
(Description.)

Parcel No. 82.
519 (Description.)

Parcel No. 83.
(Description.)

Parcel No. 84.
(Description.)

Parcel No. 85.
(Description.)

Parcel No. 86.
(Description.)

Parcel No. 87.
(Description.)

520 Parcel No. 88.
(Description.)

Parcel No. 89.
(Description.)

Parcel No. 90.
(Description.)

Parcel No. 91.
(Description.)

Parcel No. 92.
(Description.)

521 Also all the following described parcels of land, being in division 6, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 93.
(Description.)

Parcel No. 94.
(Description.)

Parcel No. 95.
(Description.)

522 Also all the following described parcels of land, being in division 7, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 96.
(Description.)

Parcel No. 97.
(Description.)

Parcel No. 98.
(Description.)

523 Parcel No. 98a.
(Description.)

Parcel No. 99.
(Description.)

Parcel No. 100.
(Description.)

Parcel No. 101.
(Description.)

Parcel No. 102.
(Description.)

524 Parcel No. 103.
(Description.)

Parcel No. 104.
(Description.)

Parcel No. 105.
(Description.)

Parcel No. 106.
(Description.)

Parcel No. 107.
525 (Description.)

Parcel No. 108.
(Description.)

Parcel No. 109.
(Description.)

Parcel No. 110.
(Description.)

Parcel No. 111.
(Description.)

Parcel No. 112.
(Description.)

526 Parcel No. 113.
(Description.)

Parcel No. 114.
(Description.)

Parcel No. 115.
(Description.)

Parcel No. 116.
(Description.)

Parcel No. 117.
(Description.)

526 Parcel No. 118.
(Description.)

Parcel No. 119.
(Description.)

Parcel No. 120.
(Description.)

Parcel No. 121.
(Description.)

Parcel No. 122.
(Description.)

528 Parcel No. 123.
(Description.)

Parcel No. 124.
(Description.)

Parcel No. 125.
(Description.)

Parcel No. 126.
(Description.)

Parcel No. 127.
(Description.)

529 Parcel No. 128.
(Description.)

Parcel No. 129.
(Description.)

Parcel No. 130.
(Description.)

Parcel No. 131.
(Description.)

Parcel No. 132.
(Description.)

530 Parcel No. 133.
(Description.)

Parcel No. 134.
(Description.)

Parcel No. 135.
(Description.)

Parcel No. 136.
(Description.)

Also all the following described parcels of
531 land, being in division 8, Malibu Road, as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Parcel No. 137.
(Description.)

Parcel No. 138.
(Description.)

Parcel No. 139.
(Description.)

Parcel No. 140.
(Description.)

532 Parcel No. 141.
(Description.)

Parcel No. 142.
(Description.)

Parcel No. 143.
(Description.)

Parcel No. 144.
(Description.)

Parcel No. 145.
(Description.)

533 Parcel No. 146.
(Description.)

Further reference is hereby made to said county surveyor's map No. 8070 on which the location of all parcels of land herein described is accurately shown.

Lands of defendant Hueneme, Malibu and Southern Railway, a corporation:

All those portions of the right of way granted
534 to said defendant by deed recorded February 2, 1916, in the office of the county recorder of Los Angeles county in book 6216 of deeds, at page 92 thereof, bounded and more particularly described as follows, to-wit:

Those portions of that certain strip of land, sixty feet in width, deeded to the Hueneme, Malibu and Southern Railway by deed recorded in book 6216, page 92 *et seq.* of deeds, records of Los Angeles county, which lie easterly of the westerly line of that certain parcel of land

deeded to May K. Rindge by deed recorded in book 766, page 221 of deeds, records of said county, and are bounded and described as follows:

First: Beginning at the intersection of the southerly line of the aforesaid sixty foot strip of land deeded to the Hueneme, Malibu and Southern Railway, with the easterly line of Rancho Topanga Malibu Sequit, as shown on map recorded in book 1, pages 414 *et seq.* of patents, records of said county; thence westerly, along the southerly line of said sixty foot strip of land, to an angle point in the northerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road, as shown on county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county, said angle point being opposite station 3+25.65, in division No. 1, of said located center line; thence easterly, along the northerly line of said forty foot strip of land, to the southwest corner of parcel No. 1 as shown on said county surveyor's map No. 8070; thence northerly, easterly, northerly and easterly along the various courses of the boundary of said parcel No. 1 to the easterly line of said Rancho Topanga Malibu Sequit; thence southeasterly along said rancho line, to the point of beginning.

183

Second: Beginning at an angle point in the northerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road, as shown on the aforesaid county surveyor's map No. 8070, said angle point being opposite station 116+12.18, in division No. 1, of said located center line, said point of beginning also being in the southerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence westerly, along the southerly line of said sixty foot strip of land, to the southerly line of the aforesaid forty foot strip of land; thence westerly, along the southerly line of said forty foot strip of land, to the northeast corner of parcel No. 5, as shown on the aforesaid county surveyor's map No. 8070; thence southerly and westerly, along the easterly and southerly lines of said parcel No. 5, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence easterly, along the northerly line of said sixty foot strip of land, to the northerly line of the aforesaid forty foot strip of land; thence easterly along the northerly line of said forty foot strip of land, to the point of beginning.

Third: Beginning at the northeast corner of parcel No. 10, as shown on the aforesaid county surveyor's map No. 8070, said point of begin-

541 ning being in the southerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of Malibu road, as shown on said map; thence easterly along the southerly line of said forty foot strip of land, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence westerly, along the northerly line of said sixty foot strip of land, to the southerly line of the
542 aforesaid parcel No. 10; thence easterly, northerly, easterly and northerly, along the various courses of the boundary of said parcel No. 10, to the point of beginning.

Those portions of that certain strip of land, sixty feet in width, deeded to the Hueneme, Malibu and Southern Railway by deed recorded in book 6216, page 92 *et seq.* of deeds, records of Los Angeles county; which lie westerly of
543 the westerly line of that certain parcel of land deeded to May K. Rindge, by deed recorded in book 766, page 221 of deeds, records of said county, and are bounded and described as follows:

First: All of parcel No. 87 as shown on county surveyor's map No. 8070, on file in the office of the surveyor of Los Angeles county.

Second: All of parcel No. 89 as shown on the aforesaid county surveyor's map No. 8070.

Third: That portion of parcel No. 90 as

shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty foot strip of land deeded to the Hueneme, Malibu and Southern Railway.

Fourth: Beginning at a point in the southerly line of that certain forty foot strip of land, lying twenty feet on each side of the located center line of the Malibu road as shown on the aforesaid county surveyor's map No. 8070, said point of beginning being opposite station 388+61.90, in division No. 6, of said located center line; thence westerly, along the southerly line of said forty foot strip of land, to the northerly line of the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway; thence easterly along the northerly line of said sixty foot strip of land, to the southerly line of the aforesaid forty foot strip of land; thence westerly along the southerly line of said forty foot strip of land, to the point of beginning.

Fifth: That portion of parcel No. 97 as shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway.

Sixth: That portion of parcel No. 142 as shown on the aforesaid county surveyor's map No. 8070, which lies within the aforesaid sixty foot strip of land, deeded to the Hueneme, Malibu and Southern Railway.

547 Seventh: All of parcel No. 144 as shown on the aforesaid county surveyor's map No. 8070.

Done in open court this 18th day of April, 1919.

PAUL J. McCORMICK,
Judge of the Superior Court.

Endorsed: Filed Apr. 18, 1919. H. J. Lelande, clerk; by E. C. Polsue, deputy.

Docketed Apr. 29, 1919; entered Apr. 29, 1919; book 471, page 76; by E. Gaffney, deputy
548 clerk.

[TITLE OF COURT AND CAUSE.]

Clerk's Certificate to Judgment Roll.

I, H. J. Lelande, county clerk of the county of Los Angeles, state of California, and *ex-officio* clerk of the Superior Court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-
549 entitled action, and recorded in judgment book 471 of said court, at page 76. And I further certify that the foregoing papers, hereto annexed, constitute the judgment roll in said action.

Witness my hand and the seal of said Superior Court this Apr. 29, 1919.

(Seal) H. J. LELANDE, *Clerk.*
By W. B. HITCHCOCK, *Deputy.*

Judgment roll filed and entered Apr. 29, 1919, in book 471, page 76. H. J. Lelande, clerk; by W. B. Hitchcock, deputy.

550 [TITLE OF COURT AND CAUSE.]

Notice of Appeal.

To the Above-Named Plaintiff, and to Its Attorneys, A. J. Hill, County Counsel; Charles S. Burnell, Deputy County Counsel, and Paul Vallee, Deputy County Counsel, and to Hon. H. J. Lelande, County Clerk:

You, and each of you, will please take notice that the defendants, Rindge Company, a corporation; May K. Rindge, Hueneme, Malibu and
551 Southern Railway, a corporation, and Hueneme, Malibu and Port Los Angeles Railway, a corporation, hereby appeal, and each of them hereby appeals, to the Supreme Court of the state of California, from the interlocutory judgment and decree of condemnation heretofore rendered against them, and each of them, in the above-entitled action, and from the whole thereof, and also from the final order and judgment
552 of condemnation signed by the court and filed with the clerk of the court on the 18th day of April, 1919, and from the whole thereof.

Dated April 28th, 1919.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendants.

Endorsed: Received copy of the within notice this 28 day of April, 1919. A. J. Hill, county counsel; by C. S. Burnell, attorney for plaintiff.

Filed Apr. 28, 1919. H. J. Lelande, clerk; by E. D. Doyle, deputy.

553 B59443.

In the Superior Court

OF THE

State of California,

IN AND FOR THE COUNTY OF LOS ANGELES.

County of Los Angeles,
Plaintiff.

554 *vs.*

Rindge Company, a Corporation, John One, John Two, John Three, Mary One, Mary Two, Mary Three, John Doe Company, and John Doe Corporation,
Defendants.

Complaint. Condemnation.

555 The County of Los Angeles, plaintiff in the above entitled action, by way of complaint against the defendant above named, alleges:

I.

That the plaintiff above named is now, and at all the times hereinafter mentioned has been, a county of the state of California.

That the defendant, Rindge Company, is a corporation organized and existing under and by virtue of the laws of the state of California, with its principal place of business in the city

of Los Angeles, county of Los Angeles, state of California.

II.

That the public interest and necessity require the construction of a public highway over the property hereinafter described, and that for the purpose of constructing a public highway, the acquisition of said property is necessary, viz., that certain parcel of land situate in the county of Los Angeles, and described as being:

(Description.)

That none of the property hereinabove described has heretofore been appropriated to any public use, and said property constitutes all the land sought to be condemned in this action; that said proposed improvement is planned in the manner which will be most compatible with the greatest public good and the least private injury.

III.

That the location, general route and termini of the right of way herein sought and hereinabove described, and all parcels of land sought to be condemned in this action, are correctly delineated and shown upon the map thereof hereto attached, which map is hereby referred to and made a part of this complaint. That said parcel of land constitutes only a part of a larger parcel of land, and such larger parcel of land is

559 also correctly delineated and shown upon said map.

IV.

That the board of supervisors of Los Angeles county, at a regular meeting thereof held on the 3rd day of December, 1917, duly adopted, by four-fifths vote of all members, a resolution declaring that it was the determination of said board, and they found that the public interest
560 and necessity required the construction and completion by said Los Angeles county of a public highway over the property hereinabove described, and that said property was necessary for said public highway purposes; and declaring that said property should be condemned for said public highway purposes; and authorizing the county counsel of said county to institute proceedings in the proper court for the condemnation of said land for public highway purposes,
561 in the name of the said county.

V.

That it is informed and believes, and therefore alleges the fact to be that said Rindge Company, defendant herein, is the owner of the parcel of land herein sought to be condemned, viz., the parcel of land described in paragraph II hereinabove. That said parcel is only a part of a larger parcel of land owned by said defendant, which said larger parcel is described as being all that tract of land in said county

of Los Angeles known by the name of Rancho Topanga-Malibu-Sequit, patented to Matthew Keller by the United States of America on the 29th day of August, 1872, and a patent there for recorded in book 1, page 407, and up to and including page 417 of patents, of the records of said county of Los Angeles, excepting there from the eastern 1856.75 acres, more or less, of said rancho heretofore deeded to May K. Rindge by deed recorded in book 766 of deeds, page 221 and following, records of said county; said larger parcel being one of the parcels of land deeded to said Rindge Company by May K. Rindge, Samuel K. Rindge, Frederick H. Rindge and Rhoda A. Rindge, by deed dated the 20th day of December, 1911, and recorded in book 4819 of deeds, records of said county, at page 217 and following, to which deed reference is hereby made for a further and more particular description, as it appears on pages 224 and 225 of said book 4819 of deeds.

VI.

That the names of all the owners and claimants of the property sought to be condemned in this action, or any part thereof, so far as known to this plaintiff, are set forth in the title hereof.

That the defendants, John One, John Two, John Three, Mary One, Mary Two, Mary Three, John Doe Company and John Doe Corporation,

565 are sued and designated herein by fictitious names, for the reason that their true names are unknown to this plaintiff, and said plaintiff will ask leave to amend this complaint upon ascertaining said true names.

That said defendants have or claim to have some interest or lien upon the lands hereinabove in paragraph II described, or in some part or parcel thereof, but the nature, character and extent of such claim, interest or lien is unknown
566 to this plaintiff.

Wherefore, this plaintiff prays that said defendants be required by answer to set forth the nature and extent of their several estates or interests in the land or any parcel thereof sought to be condemned in this action, and that such several estates and interests may be determined and adjudicated in this action; that the value of each and every such separate estate or interest in said land or any parcel thereof, and the dam-
567 age accruing to the respective owners of such separate estate or interest by reason of the condemnation thereof in the construction of the improvement in the manner proposed by the plaintiff, be ascertained and adjudged; that upon the payment to the said several defendants, or into court for them, of the several amounts so ascertained, the court make and enter a final judgment condemning the land herein to the public use for the public improvement herein

568 described; and for such other and further relief as to the court may seem meet in the premises.

A. J. HILL,
County Counsel, and
EDWARD T. BISHOP,
Deputy County Counsel,
Attorneys for Plaintiff.

State of California, County of Los Angeles—ss.

Edward T. Bishop, being first duly sworn, deposes and says: That the plaintiff, the County
569 of Los Angeles, is a body politic and corporate, a legal subdivision of the state of California, and therefore is unable to verify the foregoing complaint except through its officers; that he is a deputy county counsel of said plaintiff county and an attorney for the plaintiff in the above entitled action, and that as such deputy county counsel he is an officer of said county, and as such verifies this complaint; that he has read
570 the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated upon information or belief, and as to those matters he believes it to be true.

EDWARD T. BISHOP.

Subscribed and sworn to before me this 24th day of January, 1918.

H. J. LELANDE, *County Clerk.*
By EMILY W. WUSSOW, *Deputy.*

MAP.

571 Endorsed: Filed Jan. 24, 1918. H. J. Lelande, clerk; by R. F. Gragg, deputy.

[TITLE OF COURT AND CAUSE.]

Amended Answer of Defendant, Rindge Company.

Now comes Rindge Company, one of the defendants in the above-entitled action, and by
572 leave of the court first had and obtained files this, its amended answer to the complaint of plaintiff therein, and says:

I.

That it admits the allegations of paragraph I of said complaint.

II.

That it denies that the public or any interest or necessity requires the construction of a public or any highway or any highway whatsoever
573 over the property described in paragraph II of said complaint, or over any property, or any part of any property, whatever belonging to this defendant, or for the purpose of constructing a public or any highway whatever that the acquisition of said or any part or portion of said property is necessary either as described in paragraph II of said amended complaint, or otherwise, or at all.

574 III.

That it has not sufficient information, knowledge or belief, or either, to enable it to answer the allegations of paragraph IV of said complaint, and, therefore, it denies all and singular, each and every of the said allegations, and the whole thereof.

IV.

That it admits the allegations of paragraph V of said complaint.

575 And as another and further and separate action and defense herein defendant alleges:

That it is informed and believes, and upon its information and belief alleges, that there has been no consideration or determination by the board of supervisors of the county of Los Angeles, state of California, of any of the matters or things alleged in the complaint herein, and particularly of the matters or things alleged in

576 paragraph II and paragraph IV of said complaint, and that the said alleged resolution referred to in paragraph IV of the said complaint was arbitrarily adopted by the said board of supervisors of Los Angeles county without any consideration of the matters or things therein contained, and without the exercise of any discretion therein, and well knowing that there was no room for the exercise of any discretion therein, but that on the contrary knowing full well that the property proposed to be taken for a

577 public road and highway and to be condemned as in said resolution set forth and as in said complaint alleged was not, and could not be, necessary for any public use of any kind or character whatever, and particularly in this that it is located wholly and solely upon and within the confines of private property, and cannot under any circumstances afford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that,
578 therefore, the taking of the same for any alleged highway purposes would be without due process of law, and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that the taking of said property described in said resolution or any part or portion thereof for public highway or other purposes would be void, and would be a denial to this defendant of the equal protection of the laws under the Constitution of the United
579 States, and would be in contravention of the Fourteenth Amendment to the said Constitution of the United States.

And for another and further and separate answer and defense this defendant alleges:

I.

That the value of the parcel of land first described in paragraph II of the complaint herein was at the date of the filing of said complaint

and the issuance of the summons herein the sum of $368.00

II.

That the value of the parcel of land described in paragraph II of the complaint as parcel No. 1 was at said date the sum of $156.00.

III.

That the value of the parcel of land described in paragraph II of the complaint as parcel No. 2 was at said date the sum of $284.40.

IV.

That the damage and detriment to the larger parcel of land of which said parcels of land described in paragraph II of the complaint form a part, by reason of the taking of said parcels of land for the purposes alleged in said complaint will not be less than $10,000.00.

Wherefore this defendant prays that plaintiff take nothing, and that it recover its costs of suit; or that, in the event of the condemnation and taking of the parcels of land described in paragraph II of the complaint, that this defendant have and recover of and from the plaintiff the sum of $10,808.40 as the value thereof and as damages for the taking thereof, and its costs of suit.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Said Defendant.

Duly verified.

583 Endorsed: Received copy of the within amended answer this 30 day of Sept., 1918. A. J. Hill, Paul Vallee, Charles S. Burnell, attorney for plaintiff.

Filed Sep. 30, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.

[TITLE OF COURT AND CAUSE.]

Verdict. Los Alisos Road Case.

584 1. What, on the 24th day of January, 1918, was the actual market value of the land sought to be taken from defendant Rindge Company?

Answer (Forty foot strip $184.00
(
(Additional parcels $220.00

Total $404.00

2. Will the remaining portion of defendant Rindge Company's land, not sought to be taken, 585 be damaged by reason of the severance therefrom of the part which is sought to be taken?

Answer No

(Yes or No)

3. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer $ None

4. How many miles of fencing will it be necessary to construct on the property of de-

586 fendant Rindge Company by reason of the taking and use for public highway purposes of the land sought to be taken from defendant Rindge Company? (This question must be answered in the light of the concession made by plaintiff which I have quoted in the instruction.)

Answer 3.87 miles.

5. What kind of fencing will be suitable to be constructed on the land of defendant Rindge Company by reason of such taking and use of
587 its land sought to be taken?

Answer Thirty-six inch woven wire with two barbed wires above with suitable posts.

6. What will be the cost of such fencing on the land of defendant Rindge Company?

Answer $(675.00) (per mile) $2612.25

7. What, on the 24th day of January, 1918, was the actual market value of the land sought to be taken from defendant Hueneme, Malibu
588 and Port Los Angeles Railroad Company?

Answer $—.0

We, the jury, ascertain and assess the compensation to be paid to the defendants herein in accordance with answers to the foregoing interrogatories.

JAS. A. WILLIAMS,
Foreman.

Endorsed: Filed Dec. 19, 1918. H. J. Lelande, clerk; by E. C. Polsue, deputy.

589 [TITLE OF COURT AND CAUSE.]

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on September 30, 1918, A. J. Hill, county counsel, Charles S. Burnell, deputy county counsel and Paul Vallee, deputy county counsel, appearing as counsel for the plaintiff and Messrs. Anderson and Anderson, and Nathan Newby appearing as counsel for defendant, Rindge Company,
590 a corporation.

Defendants sued under the fictitious names of John Doe One, John Doe Two, John Doe Three, Mary Doe One, Mary Doe Two, Mary Doe Three, John Doe Company and John Doe Corporation, not having been served with summons in said cause, the action was dismissed as to each and all of said defendants so sued herein.

Whereupon a jury was regularly impaneled and sworn, and the cause was tried by the court
591 without a jury as to all of the issues therein, except the issues as to the value of the property sought to be condemned and all improvements thereon pertaining to the realty, and the damage, if any, accruing to the lands of the defendant not sought to be condemned, by reason of the severance of such lands from the portions sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff, the number of miles of fencing which

592 it will be necessary to construct upon the property of the defendant by reason of the taking and use for public highway purposes of the land sought to be taken, the kind of fencing which will be suitable to be constructed on the lands of said defendant by reason of such taking and use, and the cost of such fencing; and all of said last mentioned issues were submitted to trial before said jury.

593 The respective parties having introduced evidence, both oral and documentarly, upon all of the issues submitted for trial by the court, counsel for the respective parties having been heard in argument thereon, and the said issues having been submitted to the court for its decision, the court being fully advised as to the law and the premises, now finds as follows, to-wit:

I.

That all of the allegations contained in plain-
594 tiff's complaint in paragraphs I, II, III, IV and V thereof, are true.

II.

That all of the allegations contained in paragraph VI of said complaint are true, except that it is not true that the defendants sued by the fictitious names of John Doe One, John Doe Two, John Doe Three, Mary Doe One, Mary Doe Two, Mary Doe Three, John Doe Company and John Doe Corporation have, or that any or either of them has, any interest in, or lien upon

595 the lands described in paragraph II of the complaint herein, or in any part or parcel thereof, and in this behalf the court finds that the sole owner and only person interested in or having any claim or lien upon the said lands is the defendant, Rindge Company, a corporation.

III.

That it is not true that there has been no consideration or determination by the board of supervisors of the county of Los Angeles of
596 any of the matters or things alleged in said complaint and particularly of the matters or things alleged in paragraph IV of said complaint, nor is it true that the resolution referred to in paragraph IV of said complaint was arbitrarily adopted by said board of supervisors, without any consideration of the matters or things therein contained, or without the exercise of any discretion therein, or well knowing
597 that there was no room for the exercise of any discretion therein, or that it was arbitrarily adopted at all, nor is it true that said resolution was adopted by said board of supervisors knowing full well, or otherwise, or at all, that any of the property proposed to be taken for a public road and highway, and to be condemned, as in said resolution set forth and as in complaint alleged, was not, and could not be necessary for any public use of any kind or character whatever, and cannot, under any circumstances, af-

598 ford any accommodation of any kind or character to the traveling public, or any part or portion thereof, and that the taking of same for said highway purposes would be without due process of law or in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, or that the taking of said property under said resolution for public highway or other purposes, would be void, or would be a denial to the defendant, of the equal
599 protection of the laws under the Constitution of the United States, and would contravene the Fourteenth, or any amendment to said Constitution, and in this behalf the court finds; that it is true that the property proposed to be taken for a public road and highway, and sought to be condemned herein, is located wholly and solely upon and within the confines of private property, except that the southerly end of the strip of
600 land sought to be taken terminates at, and will connect with, another strip of land sought to be acquired by the plaintiff in another action, (which other action was tried at the same time as, and with this action, and before the same court and jury) brought for the purpose of condemning said last mentioned strip of land for public highway purposes, and the court further finds that the highway sought to be established and maintained over and upon the land sought in this action to be taken and for the purpose

601 of which the taking is sought, will afford accommodation to the traveling public.

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing facts, the court finds as follows:

I.

That it is necessary for highway purposes, and the public interest, convenience and necessity require, the acquisition of an easement in
602 and over the property particularly described in the amended complaint in paragraph number II thereof, for the construction, establishment and maintenance of a public highway.

II.

That the use to which the property sought to be taken is to be applied, is a use authorized by law.

III.

That the plaintiff is entitled to an interlocu-
603 tory judgment adjudging that upon payment to the defendant, Rindge Company, a corporation, or into court for its benefit, of the amount adjudged by the jury herein to be due to it as compensation for the land so sought to be condemned, as damage to the land not sought to be condemned by reason of the severance therefrom of the land sought to be condemned, and for the construction of fencing, that the respective parcels of property, as set forth in said complaint herein, sought to be taken by this

604 action, be condemned to the use of the plaintiff herein for public highway purposes; namely, for the construction, establishment and maintenance thereon and thereover of a public highway, as prayed in said complaint herein.

IV.

That the said defendant have and recover of and from the plaintiff, its costs.

Let judgment be entered accordingly.

Dated this 30th day of January, 1919.

605

PAUL J. McCORMICK,
Judge of the Superior Court.

Endorsed: Received copy of the within findings this 24 day of Jany., 1919. Anderson & Anderson, Nathan Newby, attorneys for certain defendants.

Filed Jan. 30, 1919. H. J. Lelande, clerk; by E. C. Polsue, deputy.

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606 [TITLE OF COURT AND CAUSE.]

Interlocutory Judgment in Condemnation.

The above entitled cause came on regularly for trial before the court without a jury as to all of the issues except the issues as to the value of the property sought to be condemned and all improvements thereon pertaining to the realty, the damage, if any, to accrue to the lands of the defendant, not sought to be condemned, by reason of the severance of such lands from the

607 portion sought to be condemned, and the construction of the improvement in the manner proposed by plaintiff, the number of miles of fencing which it will be necessary to construct upon the property of the defendant by reason of such taking and use, and the cost of such fencing, and all of said last mentioned issues were submitted to trial before a jury regularly impaneled and sworn.

608 And the court, having found upon all of the issues so submitted to it, and having made its findings of fact and conclusions of law upon said issues, and the issues last above enumerated having been submitted to such trial by a jury, and evidence both oral and documentary having been introduced by the respective parties and the cause having been argued by counsel for said parties, and the court having given its instructions in writing, the jury retired to consider the

609 same and their verdict, and subsequently returned into court and being called, answered to their names and rendered their verdict upon said issues as follows:

1. What, on the 24th day of January, 1918, was the actual market value of the land sought to be taken from defendant Rindge Company?

Answer. (Forty foot strip $184.00
(Additional parcels $220.00
Total $404.00

610 2. Will the remaining portion of defendant Rindge Company's land, not sought to be taken, be damaged by reason of the severance therefrom of the part which is sought to be taken?

Answer. No.

3. If your answer to the last interrogatory was in the affirmative, what do you find the amount of such severance damage to be?

Answer. None.

4. How many miles of fencing will it be
611 necessary to construct on the property of defendant Rindge Company by reason of the taking and use for public highway purposes of the land sought to be taken from defendant Rindge Company? This question must be answered in the light of the concession made by plaintiff, which I have quoted in the instruction.

Answer. 3.87 miles.

5. What kind of fencing wil be suitable to be constructed on the land of defendant Rindge
612 Company by reason of such taking and use of its land sought to be taken?

Answer. Thirty-six inch woven wire with two barbed wires above, with suitable posts.

6. What will be the cost of such fencing on the land of defendant Rindge Company?

Answer. $675.00 per mile—total $2612.25

And it appearing to the court that a stipulation has heretofore been entered into by and between the plaintiff and all of the defendants

appearing and answering herein, which stipulation provides as follows:

"First: That the judgment in the above entitled cause need not be entered within twenty-four (24) hours after the rendition of the verdict, but that such judgment may be entered upon or after the filing of the findings of fact and conclusions of law by the court in the same manner as in cases tried by the court without a jury;

Second: That the memorandum of costs and disbursements need not be served or filed within five (5) days after the verdict, but that the same may be served and filed within five (5) days after notice that the findings of fact and conclusions of law made by the court have been filed."

Now, therefore, by reason of the law and the premises and the findings and conclusions of the court, and the said verdict, it is hereby ordered, adjudged and decreed, that upon payment by plaintiff, the County of Los Angeles, to the defendant, Rindge Company, a corporation, or upon deposit in court by said plaintiff for said defendant of the moneys assessed in said verdict as the value of the parcels of land taken by plaintiff from the said defendant and hereinafter described, and for the cost of constructing fencing upon the lands of the defendant, amounting in the aggregate to be paid to

616 the defendant, Rindge Company, a corporation, to the sum of three thousand sixteen and twenty-five hundredths dollars ($3,016.25) and costs; within thirty days after the entry of this judgment, according to law, the plaintiff take the lands hereinafter described for the purposes alleged in the plaintiff's said complaint herein, and that final judgment for the said property for the public use in the manner proposed by the plaintiff be made and entered according to
617 the law.

It is further ordered, adjudged and decreed that the defendant have and recover from the plaintiff its costs herein, taxed at $4.50.

The following is a description of the lands condemned in this action, and herein referred to:

(Description.)

Done in open court this 5th day of February,
618 1919.

PAUL J. McCORMICK,
Judge of the Superior Court.

Endorsed: Filed Feb. 5, 1918. H. J. Lelande, clerk; by E. A. Wickersham, deputy.

Docketed Feb. 13-19; entered Feb. 13-19; book 431, page 266; by Irving Baxter, deputy clerk.

619 [TITLE OF COURT AND CAUSE.]

Clerk's Certificate to Judgment Roll.

I. H. J. Lelande, county clerk of the county of Los Angeles, state of California, and *ex-officio* clerk of the Superior Court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and recorded in judgment book 431 of said court, at page 266. And I further
620 certify that the foregoing papers, hereto annexed, constitute the judgment roll in said action.

Witness my hand and the seal of said Superior Court this Feb. 13, 1919.

(Seal) H. J. LELANDE, *Clerk.*

By W. B. HITCHCOCK, *Deputy.*

Judgment roll filed and entered Feb. 13, 1919, in book 431, page 266. H. J. Lelande, clerk; by
621 W. B. Hitchcock, deputy.

[TITLE OF COURT AND CAUSE.]

Final Order of Condemnation.

It appearing to the satisfaction of the court that the plaintiff in the above entitled action has deposited with H. J. Lelande, county clerk of Los Angeles county and *ex-officio* clerk of the Superior Court of said county, for the defendant herein, as required by that certain interlocu-

622 tory judgment of condemnation made and filed in the above entitled cause on the 5th day of February, 1919, and recorded in book 431 of judgments, page 266, records of the clerk of the above entitled court, as follows:

The sum of $3,016.25 for the defendant, Rindge Company, a corporation; and

It further appearing to the court that plaintiff, County of Los Angeles, on the 5th day of April, 1919, filed with the clerk of the court
623 "Notice of Election to Fence" in words following, to-wit:

"To the Defendant, Rindge Company, a Corporation, and to Its Attorneys, Anderson & Anderson and Nathan Newby:

You and each of you will please take notice that the plaintiff, County of Los Angeles, hereby elects to build and construct 3.87 miles of 36 inch woven wire fence, with two barb wires above, with suitable posts, as specified by the
624 verdict of the jury in the above entitled action, which are the fences for which damages have been assessed in said action.

Dated Los Angeles, California, April 4th, 1919.

A. J. HILL,
County Counsel;
C. S. BURNELL,
Deputy County Counsel;
PAUL VALLEE,
Deputy County Counsel,
Attorneys for Plaintiff."

625 Now, therefore, on motion of A. J. Hill, county counsel; Charles S. Burnell, deputy county counsel, and Paul Vallee, deputy county counsel, attorneys for plaintiff, it is ordered, adjudged and decreed that the parcels of land hereinafter described be, and the same are hereby condemned for public highway purposes.

Said parcels of land so condemned for public highway purposes are more particularly de-
626 scribed as follows:

(Description.)

Done in open court this 18th day of April, 1919.

PAUL J. McCORMICK,
Judge of the Superior Court.

Endorsed: Filed Apr. 18, 1919. H. J. Lelande, clerk; by E. C. Polsue, deputy.

Docketed Apr. 29, 1919; entered Apr. 29,
627 1919; book 431, page 271; by G. S. Clarke, deputy clerk.

[TITLE OF COURT AND CAUSE.]

Clerk's Certificate to Judgment Roll.

I. H. J. Lelande, county clerk of the county of Los Angeles, state of California, and *ex-officio* clerk of the Superior Court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-

entitled action, and recorded in judgment book 431 of said court, at page 271. And I further certify that the foregoing papers, hereto annexed, constitute the judgment roll in said action.

Witness my hand and the seal of said Superior Court, this Apr. 29, 1919.

(Seal) H. J. LELANDE, *Clerk*.

By W. B. HITCHCOCK, *Deputy*.

Judgment roll filed and entered Feb. 29, 1919, in book 431, page 271. H. J. Lelande, clerk; by W. B. Hitchcock, deputy.

[TITLE OF COURT AND CAUSE.]

Notice of Appeal.

To the Above-Named Plaintiff, and to Its Attorneys, A. J. Hill, County Counsel; Charles S. Burnell, Deputy County Counsel, and Paul Vallee, Deputy County Counsel, and to Hon. H. J. Lelande, County Clerk:

You, and each of you, will please take notice that the defendant, Rindge Company, a corporation, hereby appeals to the Supreme Court of the state of California from the interlocutory judgment and decree of condemnation heretofore rendered against it, in the above-entitled action, and from the whole thereof, and also from the final order and judgment of condemnation signed by the court and filed with the clerk

631 of the court on the 18th day of April, 1919, and from the whole thereof.

Dated April 28th, 1919.

ANDERSON & ANDERSON,
NATHAN NEWBY,
Attorneys for Defendant.

Endorsed: Received copy of the within notice this 28 day of April, 1919. A. J. Hill, county counsel; by C. S. Burnell, attorney for plaintiff.

Filed Apr. 28, 1919. H. J. Lelande, clerk; by
632 E. D. Doyle, deputy.

[TITLE OF COURT AND CONSOLIDATED CAUSES.]

Stipulation as to Various Descriptions.

It is hereby stipulated and agreed that the various metes and bounds descriptions of the rights-of-way strips and parcels contained in the judgment rolls in the above-entitled action
633 may be omitted in printing the transcript on appeal to the Supreme Court in said cases, such omission in each instance to be indicated by the following "(description)."

Dated April 9th, 1920.

A. J. HILL,
County Counsel;
PAUL VALLEE,
Deputy County Counsel,
Attorneys for Plaintiff.
ANDERSON & ANDERSON and
NATHAN NEWBY,
Attorneys for Defendants.

634 Endorsed: Filed Apr. 9, 1920. L. E. Lampton, county clerk; by O. M. McAulay, Jr., deputy.

[TITLE OF COURT AND CONSOLIDATED CAUSES.]

Bill of Exceptions.

Be it remembered that the following stipulations have been heretofore made and entered into by and between the parties to the above-
635 entitled actions:

First—In Case No. B-43572:

(Title of Court and Cause.)

"The motion of the Rindge Company, a corporation, and May K. Rindge, defendants in the above-entitled action, to strike out the map annexed to the complaint therein as amended came on for hearing on the 19th day of September, 1918, and upon said hearing said mo-
636 tion was denied; whereupon it was stipulated and agreed, and is now stipulated and agreed, that the ruling upon said motion may be exemplified in the general bill of exceptions should an appeal be ultimately taken by the said defendants upon the merits.

"It was further stipulated and agreed, and is hereby stipulated and agreed, that said motion should be deemed to be a motion for the modification of the map by striking out the various

637 phrases objected to therein in the event the motion to strike out the map was itself denied, and it is understood and agreed that both of such motions were presented to and heard by the court and were denied, and that in the ultimate bill of exceptions in this matter, in the event of an appeal by said defendants, there may be included the proceedings pertaining to the same."

Second—Jointly in both of the above-entitled cases:

638 (Title of Court and Causes.)

"It is hereby stipulated and agreed that but one bill of exceptions need be prepared in the above-entitled cases, and that such bill of exceptions when prepared and settled shall be deemed for all purposes to be a bill of exceptions in each of said cases.

"Dated April 9th, 1919."

(Title of Court and Causes.)

639 "It is hereby stipulated and agreed that upon the appeals in the above-entitled actions all of the exhibits in said actions which are referred to and would otherwise be included in the bill of exceptions therein may be certified to the Appellate Court by the clerk of the above-entitled court for the purposes of such appeal, and may for such purposes be deemed to be included in and a part of such bill of exceptions.

"Dated April 9th, 1919."

640 Be it further remembered, that these causes (together with Cause No. 65893 entitled The County of Los Angeles v. The Rindge Co., *et al.*, concerning the condemnation of certain other property for highway purposes) came on regularly for trial on September 30th, 1918, before the court and a jury (the jury being impanelled for the purpose of trying and trying only the question, in each case, of the amounts of dam-
641 ages to be awarded the several defendants therein), Messrs. Charles E. Burnell, deputy county counsel, and Paul Vallee, deputy county counsel, appearing as the attorneys for the plaintiff in each of said cases, and Messrs. Anderson & Anderson (represented in court by W. H. Anderson) and Nathan Newby, Esq., appearing for all of the answering defendants in each case.

Thereupon the following proceedings were
642 had and taken:

It was stipulated and agreed that the three cases might be tried on the questions of damages by the same jury, but not as consolidated cases.

The plaintiff then made a motion to strike out certain portions of the amended answers of the defendants, May K. Rindge and Rindge Company, in Case No. B-43572, referred to throughout the trial and herein referred to as the Main

643 Road Case, which motion as to such portion was denied.

At the same time the plaintiff moved the court to strike out the following portions of the amended answer of the defendant, May K. Rindge, in said Case No. B-43572, to-wit:

And for another and further and separate answer and defense this defendant alleges:

I.

644 That all of the properties described in paragraphs II and VI of the complaint and in any way involved in this action are entirely upon and within the boundaries of that certain ranch situate in the county of Los Angeles, state of California, commonly known as the Malibu Ranch.

II.

That while a portion of said Malibu Ranch is owned by the defendant, May K. Rindge, and
645 the remaining portion thereof by the defendant, Rindge Company, the said ranch as a whole is now, and was at the commencement of this action, and for more than twenty years prior thereto had been, treated, operated, managed and controlled as a single ranch under one joint management and control; and has at no time ever been severed or segregated into parts or parcels or treated or handled or managed by the owners thereof as other than a single ranch and holding.

646 III.

That said method of holding, managing and controlling said ranch by its said two owners has at all times been known to the plaintiff and to the public in general.

IV.

That said Malibu Ranch as such and under that name and designation and as embraced in the original purchase of the same by the defendant, May K. Rindge, and the predecessor
647 in interest of the defendant, Rindge Company, at the point where the proposed road sought to be condemned herein terminates at the westerly end of said road, ends at and upon the boundary line between the counties of Los Angeles and Ventura, state of California; but that the defendant, Rindge Company, is the owner and in the possession of, and was at the date of the commencement of this action, the owner and in
648 the possession of property immediately adjacent thereto in the said county of Ventura, and forming a continuation into said county of Ventura for a distance of about miles of the said ranch under the said joint management and control of the said defendants, May K. Rindge and Rindge Company.

V.

That there was not at the commencement of this action and is not now in the said county of Ventura at any point either contiguous to or

649 upon any part or portion of said property of the Rindge Company or within miles of the western, that is to say, the Ventura county, end of said ranch, any public road of any kind or character whatever; and that said ranch can be reached from said end only and wholly by private trails and ways.

VI.

That there was not at the commencement of this action, and is not now, any public road or
650 way of any kind or character either upon that portion of said Malibu Ranch located in Los Angeles county or upon that extension of the same in Ventura county; and that the said proposed road or highway sought to be condemned and taken in this action would, if condemned and taken, be located wholly and solely upon that portion of the said Malibu Ranch situated in Los Angeles county, would end and terminate
651 upon the private property of the defendant, Rindge Company, at the Ventura county line; would have no laterals or outlets or feeders of any kind or character; would be located wholly and solely upon, and give access wholly and solely to, the private ranch property of the defendants, May K. Rindge and Rindge Company; and would not and could not furnish any way of necessity or convenience to the general public or for public use or travel.

652 VII.

That neither of said defendants owners of and jointly managing and controlling said Malibu Ranch as a whole, has any need or desire for said or any public road upon said ranch or upon any part or portion thereof; but that, on the contrary, any such public road would be a constant and continuous menace and damage to their said ranch property, and would largely de-
653 stroy its value as a unit for ranch purposes; and would be and constitute a continual nuisance and expense to the said defendants.

VIII.

That by reason of the premises the taking of any part or portion of said property as contemplated by the plaintiff and as prayed for in the complaint for road or highway purposes would be without necessity of any kind or right, and in contravention of the provisions of the Con-
654 stitution of the United States, and particularly in violation of the fourteenth amendment to said Constitution, and would be void and without due process of law, and constitute a denial to the defendants, May K. Rindge, and Rindge Company, of the equal protection of the laws under the Constitution of the United States, and would contravene the said fourteenth amendment to said Constitution.

Said motion was made upon the grounds and for the reason that all of the matter asked to

655 be stricken out, and each of the separate matters, is irrelevant and immaterial and constitutes mere surplusage and conclusions of law and of the pleader and none of the matters asked to be stricken out are matters of fact, ultimate or otherwise, nor are any of them allegations upon which the court would have the right or the power to admit or receive evidence.

656 That the said motion of the plaintiff to strike out said portions of said amended answer of the said defendant, May K. Rindge, above set forth was thereupon granted by the court and the court made an order striking out the same, and the whole thereof, to which ruling and order the said defendant, May K. Rindge, and her co-defendants in said Case No. B-43572 then and there duly excepted; and the said ruling is hereby assigned as error.

Exception No. 1.

657 That thereupon and at the same time the plaintiff moved the court to strike out, upon each and all and every of the same grounds, a similar special defense in the same identical words and figures pleaded in the amended answer of the defendant, Rindge Company, in said Case No. B-43572, which motion the court then and there granted, and the court thereupon made an order striking out said special defense from the said amended answer of the defendant, Rindge Company, to which ruling and order the

658 said defendant, Rindge Company, and its co-defendants then and there duly excepted, and hereby assign the same as error.

Exception No. 2.

That at the same time the plaintiff upon each and all and every of the said grounds moved the court to strike out a paragraph known and designated as paragraph IX from each of said amended answers, to-wit: of the defendants, May K. Rindge and Rindge Company, which
659 said paragraph IX in each of said amended answers was in the words and figures following, to-wit:

"IX

"That she (it) denies, according to her (its) information and belief, that the map filed herein by way of amendment to said complaint and marked Exhibit "A" correctly delineates the parcels of land sought to be condemned herein;
660 but just to what extent it is deficient and incorrect in these regards this defendant has not sufficient knowledge, information or belief to aver."

That the court then and there granted said motion, and made an order striking out said paragraph IX from said amended answers of said defendants, to which ruling said defendant then and there duly excepted, and hereby assign the same as error.

Exception No. 3.

661 Thereupon a jury was duly impaneled and sworn to try such issues in this case as might be submitted to them.

It was then stipulated that the jury, accompanied by the court and counsel, might be taken over as much of the proposed right of way for the several proposed highways involved in this suit as were feasible.

The following proceedings (commencing on
662 October 1, 1918) were then had:

Mr. Anderson: There is one matter that I did wish to bring to the court's attention. I don't know that this is the proper time but this is a matter that has in one sense been determined by the law and motion department of this court. We expect to renew it however, by way of an objection at this time, or at the proper time, and that is this: We are going to object to the map, Exhibit "A" to the complaint, in
663 the main case, and the map Exhibit "A" in the Alisos Canon case and the Beach case, being submitted to the inspection of the jury upon the ground that they contain matters in the nature of evidentiary matters, or facts, therein, which appear to be improper, and which, in our judgment, should not be submitted to the jury since they are conclusions of the surveyor who made the map. In other words, it contains data such as "Pasture land," or "Grazing land," or "Cul-

664 tivated land," which evidentiary matters should not be on the map and which would go in, in a sense, as being proven, without the possibility of examining the surveyor under oath, or of cross-examination. As I said before, in all fairness to the court, it was raised before Judge Weller, and he denied the motion to strike out the matter, and I submit that if Your Honor will examine the map you will see the point of
665 the objection.

The Court: Is it an exhibit in the case?

Mr. Anderson: It is attached to the complaint and under ordinary procedure would be submitted to the jury and would necessarily form the basis of an examination. My own opinion is that it contains matters that are evidentiary.

Mr. Burnell: You say it is attached to the complaint?

666 Mr. Anderson: It is not attached to the complaint, but it is filed with the complaint. I will submit to the court our copy for the purpose of an examination. The defendants are perfectly willing that those particular matters to which we have referred, may be inked out and the map reformed in that regard but we have them at present in the form of evidentiary matter which is not under oath.

The Court: Is it intended by the county

667 counsel to be put in as evidentiary matter without proof?

Mr. Burnell: No, Your Honor, it is not.

(Discussion.)

The Court: We will determine that matter definitely when the question rises.

Mr. Burnell: Then, if Your Honor please, we will offer certain resolutions; we desire to offer in evidence a resolution found on page 344, volume 17, road book of Los Angeles county, 668 the same being a resolution which is set forth in the complaint in the main or Malibu Road case (No. B-43572). The resolution being one that purports to have been adopted at a meeting of the board of supervisors of Los Angeles county held on the 26th day of August, 1916, and the record shows on the face of it that the resolution was carried by a vote of all the supervisors, the notation being as follows: "On motion of 669 Supervisor Hinshaw, duly seconded and carried by the following vote, ayes, Hamilton, Norton, Woodley, Hinshaw, and Pridham—noes, none. It is ordered that the following resolution be and is hereby adopted." Then follows the resolution.

Mr. Anderson: We waive the reading of the resolution.

The resolution in question (omitting the descriptions of the right of way and of the prop-

erty sought to be condemned) was and is as follows, to-wit :

"Whereas, The public necessity and interest of the people of the county of Los Angeles do require that a certain highway be constructed in said county over and across those certain parcels of real property hereinafter described, and for that purpose and for such public use it is necessary that those certain pieces or parcels of real property hereinafter described be acquired by said county by condemnation, namely: the following described property located in the county of Los Angeles, state of California, to-wit:

A strip of land 40 feet wide being a portion of the Rancho Topango-Malibu-Sequit, as shown on map recorded in book No. 1, page 414, et seq. of patents, records of Los Angeles county, said strip being bounded easterly by the easterly line of said Rancho, and bounded westerly by the westerly line of said Rancho, and lying 20 feet on each side of the following described center line:"

(Here follows description as set forth in the complaint.)

"Also the following described parcels of land, being in Division 1 of said Malibu Road as shown on said county surveyor's map No. 8070 on file in the office of the surveyor of Los Angeles county."

(Here follows the description of parcels lying on both sides of said forty foot strip, as fully set forth in the complaint.)

"Further reference is hereby made to said county surveyor's map No. 8070 on which the location of all parcels of land herein described is accurately shown."

"Now, therefore, be it resolved, and it is the finding and determination of this board, that the public interest and necessity require the acquisition by the county of Los Angeles of those certain pieces or parcels of land hereinbefore described for a public purpose, namely, for public highway purposes, and for the construction and completion of a public highway thereover; and,

Be it further resolved, that those certain pieces or parcels of land hereinabove described be condemned for a public purpose, namely, for a public highway and the construction and completion thereof and the county counsel of the county of Los Angeles is hereby directed to institute proceedings in the Superior Court of the state of California, in and for said county of Los Angeles for the condemnation of those certain pieces or parcels of real property hereinabove described for public highway purposes, and to take all steps necessary for the condemnation of such pieces or parcels of land in the name of said county."

676 The next offer, if the court please, is the resolution of the board of supervisors, passed on the 3rd day of December, 1917, being at a regular meeting of the board of supervisors, of Los Angeles county, held on that date, being found in road book No. 19, commencing on page 77, being the resolution authorizing the condemnation of land for the right-of-way for the road we have referred to as the Los Alisos road (in
677 case No. B-59,443).

Mr. Anderson: We have no objection to it being deemed read, we only object to his saying that it was "Authorizing." We will substitute for that, "Purporting to authorize."

Mr. Burnell: I am reading the title out of the book.

Mr. Anderson: They may be deemed admitted on the same objections, as we made to the resolution in the main case.

678 Mr. Burnell: It is the original resolution of condemnation and we desire at this time in connection with that to read this part: "On motion of Supervisor McClellan, duly seconded and carried by the following vote, ayes, Woodley, McClellan, Dodge & Hamilton; noes, none; it is ordered that the following resolution be and the same is hereby adopted." And then follows the resolution as set forth in the complaint in the Los Alisos Canon case.

679 This resolution, omitting the descriptions, which are fully set forth in the complaint in Case No. B-59,443, was and is identical in form and language with the resolution in Case No. B-43572, above set forth.

Mr. Anderson: We have no objection to it being admitted under the same conditions, deemed read, subject to a correction.

Mr. Anderson: Then, at this time, I think in
680 view of our arrangement and stipulation as to visiting the ranch, we had better take an adjournment until five minutes of nine tomorrow morning.

The Court: Very well.

(Adjournment taken until 9 A. M., October 2, 1918).

On October 2d, 1918, the jury, accompanied by the court, its officers and counsel for all parties in each of the cases, visited and inspected
681 the proposed route for rights of way, and the larger parcels of land of which they form a part, pursuant to stipulation of all parties.

Mr. Anderson: Have you rested?

Mr. Burnell: Yes, we have rested.

Mr. Anderson: If the court please, we wish to move for a non-suit on the ground that the plaintiff in this action has failed to prove the facts which by section 1241 of the Code of Civil Procedure must be made to appear before the plaintiff can condemn the property.

682 First: That they have failed to prove that the taking is necessary to the use in question, namely, highway purposes;

Second: That they have failed to prove the public necessity of such proposed public utility or public improvement;

Third: That they have failed to prove that such property which it is proposed to be taken is necessary therefor;

683 Fourth: That they have failed to prove that such public utility or public improvement is planned or located in the manner which would be most compatible with the greatest public good and the least private injury.

Without arguing the matter, I will simply state that our position is simply this: That if the proviso in Section 1241 (C. C. P.) is, as we contend and as Your Honor has in a sense held, unconstitutional, there is nothing else in the 684 statute which makes the resolution on which they rely—makes it *prima facie* evidence. In other words, the statute seems to contemplate that while the resolution can be adopted, the matters to be determined that I have just enumerated, are to be determined by the court, and there is nothing which makes the resolution itself, so far as I can find in the law, *prima facie* evidence. In other words, eliminating that proviso, the law simply stands that the burden is

685 on the plaintiff to make these facts appear before condemnation can be had.

The Court: The motion for judgment of non-suit will be denied.

To which ruling the defendants duly excepted, and hereby assign the same as error.

Exception No. 4.

MAY K. RINDGE,

one of the defendants, called as a witness in her
686 own behalf, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Anderson:

My name is May K. Rindge. I am one of the defendants in this action, of the County of Los Angeles v. The Rindge Company and others, which is referred to as the main case, and I am the owner of the eastern portion of the Malibu
687 Ranch, through which the proposed road is sought to be condemned. The Rindge Company owns the balance. I am the president of the Rindge Company, composed of myself and two children. I have been familiar with this property known as the Rindge Ranch or Malibu Ranch since 1892. That property has been always under one management and control since it was acquired. My husband, Frederick H. Rindge, died August 29th, 1905. Since then I have had general management and control of the

688 ranch, with my children. I have kept myself familiar with all matters pertaining to the ranch, and am familiar with all matters with reference to this road question. I was not present, or anyone, so far as I know, connected with our company, at any hearing before the board or supervisors in connection with the proposed road through this ranch prior to the adoption of the resolution of August 26th, 1916. I had no
689 knowledge whatever prior to that time, either as president of the corporation or otherwise, that such a resolution was contemplated.

Redirect-Examination.

I am familiar with the case that is known as the Alisos Canon road case and was served with the complaint and summons in that case, both individually and as president of the Rindge Company. Prior to the receipt of that complaint and summons, I had no knowledge of the fact
690 that that resolution was contemplated or had been passed; I had no knowledge, either on behalf of myself or of the Rindge Company.

Cross-Examination

By Mr. Burnell:

Q. Mrs. Rindge, were you present at any meeting of the board of supervisors at any time in which the condemnation of the right-of-way for a road through Malibu Ranch was considered?

691 Mr. Anderson: Now, if Your Honor please, I have an objection to that, on this ground: It is entirely too broad and while we are taking evidence in three cases, all questions of that character should be segregated and limited to each case.

The Court: Well, it is cross-examination.

Mr. Anderson: But I also object on the ground that it is immaterial, whether she was
692 before the board of supervisors subsequent to August the 26th, 1916.

The Court: Objection overruled.

This ruling is assigned as error.

Exception No. 5.

A. I don't think so.

Mr. Anderson: Just a moment, so that Mrs. Rindge understands the question: The question is, at any time were you there with reference to the condemnation.

693 A. I was there when Mr. McClellan was considering (interruption).

Q. Now, do you remember, Mrs. Rindge, the date of that meeting of the board A. No; it was just last spring some time. Mr. Anderson, Mr. Newby and Mr. Scotton were present. Mr. Scotton is secretary; he is not secretary of the company, he is secretary of the Rindges. Those gentlemen and members of the board were present. It was a public session; there were others present. There were a lot of people there I had

694 not met; but there was Mr. Miller, who owns land in Ventura county, and Mr. Fitzpatrick, I believe, and Mrs. Decker was there. I suppose there were people there who favored the opening of the road, or roads, through the Malibu, and people who were unfavorable.

Q. I mean by that, Mrs. Rindge, that some of them addressed the board asking the board to condemn the right-of-way, and some addressed the board asking them not to; is that correct?

695 A. No, not as I remember. Mr. McClellan when he was first elected, I went to see him about the road, and he said he thought he had a road through the Triumfo, which would please the Rindges and the settlers too. It was on this account that that meeting came up, and we presented the twenty thousand names to get the road through the Triumfo instead of the Malibu. It was not for the Malibu condemnation I was

696 there. It was the Triumfo. The question was to put the road through Triumfo, as I understood it. I think there were others there who advocated the road through the Malibu. Some wanted the road through the Malibu and some through Triumfo.

Q. Did you, or any representatives of the Rindge Company, either Mr. Anderson, Mr. Newby, Mr. Scotton or yourself, make any statement to the board as to their views in the matter? A. Yes, I think Mr. Anderson did.

697 The board listened to Mr. Anderson so far as I recollect. I made a statement to the board at that time, and Mr. Guernsey made an address, advocating the not putting of the road through. Mr. Guernsey was not our attorney. We had employed him, but not as an attorney.

Q. Isn't is a fact that at that meeting, Mrs. Rindge, yourself, Mr. Newby, Mr. Anderson and Mr. Guernsey were the only persons present in the room who addressed the board in oppo-
698 sition to the making or acquisition of the road through the Malibu Ranch? A. There were others there in sympathy with the road through Triumfo, whether they spoke or not, I don't know.

Q. If there was others in sympathy, they did not express their opinions orally, in your presence, before the board? A. I don't think we wanted them to, or requested them to; I don't
699 remember.

Q. What is the fact, so far as you can remember? A. I don't recall. It was a regular Bolsheviki meeting, and I was frightened out of my life, I didn't like it a bit, and I don't remember.

Q. Isn't it fact, so far as you can recollect at the present time, that the only business at that meeting and the only persons who spoke in opposition to the road being put through the Malibu, were yourself, your employes and attor-

700 neys? A. I don't recall any others at present, although there may have been.

The Witness: I thought the proceeding was this spring; some time towards April or somewhere along there, but I am not clear in my mind. It might have been some other time. You see this has been going on for so many years that I forgot. You see I have had this for eleven years or more.

701 Q. How many meetings did you attend—that is, meetings of the board of supervisors, in which the question of the building of a road through the Malibu Ranch was the subject of discussion? A. I don't know that I attended any. I attended the one through the Triumfo, and the Malibu came up in that, but the purpose was for the discussion of the Triumfo route. I think I received a communication from the board of supervisors, from the clerk, in the 702 month of May, 1918, in regard to the meeting of the board. I wouldn't be sure. Mr. Scotton will know if it is in the office or not. I had no personal knowledge that the board of supervisors contemplated proceedings for the acquisition of a road through the Malibu Ranch prior to the time the resolution was passed in August, 1916, or until the ordinance was passed.

Mr. Burnell: Mrs. Rindge, the question of a road through the Malibu Ranch from the eastern terminus of the ranch at Las Flores Canyon,

703 or thereabouts, has been to your knowledge a subject of public discussion for a number of years prior to 1916, has it not? A. The newspapers have had quite a little to say—not through the ranch, but to the Malibu line. It is to the ranch line, not beyond the Ventura county line.

Mr. Anderson: We will stipulate that this document was signed by May K. Rindge and by
704 The Rindge Company by May K. Rindge, president, and was accompanied by the document which you handed me (referring to a paper).

Mr. Burnell: I will show it to Mrs. Rindge. Mrs. Rindge, I hand you here a document which bears the stamp on the back, "Filed July 10, 1917, M. B. Beatty, deputy county clerk, *in re* Malibu Ranch, communication from May K. Rindge and Rindge Company" which counsel has stipulated bears your signature, and your
705 signature is also under the name "Rindge Company by May K. Rindge" or M. K. Rindge"? A. Yes.

Q. I will ask you to look at that document, if you will, which you will notice is dated July, 1917, and having looked at it see if it refreshes your recollection in any particular as to the meeting that was held, if the meeting was held in 1917. (Witness examines paper.) A. I don't remember as to the date. I believe I re-

706 ceived that. I believe that was addressed to the board of supervisors.

Q. It has been stipulated that it was signed by yourself. A. Yes, sir.

Q. Now, having glanced over this document, is your memory refreshed as to any of the things about which I asked you with regard to a meeting in October, 1917, of the board of supervisors? A. There was a meeting but the settlers from Ventura county and in back of the
707 ranch, they occupied the meeting, and I think Mr. Anderson was the only one that spoke. I think all the people from Abbott Kinney's crowd from Venice, and some of the others spoke, that is, the people from Venice and the settlers up in the hills back of the ranch. I do not remember that they spoke in favor of a road through the Malibu; they were just agitating generally a road through this Malibu. Mr. Anderson spoke
708 against such a road. We had property to conserve and protect. Most of those who spoke did not even have a deed to the land. They had nothing. Some of those who spoke live, mostly, or some of them, have positions in the hall of records and in the city hall, and some of them have positions in Santa Monica and some of them live between our ranch and the Broome Ranch and between our ranch and the state highway. I don't think there was anybody there named Decker who spoke, not the first meeting

709 I don't recall; I don't think anybody named Vaughan nor Fitzpatrick spoke; I think he spoke at the last meeting; I don't remember the first meeting. At that meeting in October, 1917, the question as to whether or not a road should be built through the Malibu Ranch was not discussed before the board of supervisors. Mr. Anderson was the only one on our side; I don't think it was discussed. Mr. Anderson was then my attorney and represented me individually and
710 the Rindge Company and my family. I was present myself. I didn't make a statement at the first meeting.

Q. I now show you another document entitled "Petition for Abandonment of Proceedings for construction of highway through Malibu Ranch and for dismissal of condemnation suit," marked "Filed in the board of supervisors office, May 11, 1918, H. J. Lelande,
711 clerk, by M. B. Beatty, deputy." I will ask you if that is your signature subscribed to it, and I will ask you if the signature is yours. A. Yes, sir. And the other signature with a rubber stamp, "The Rindge Company, by May K. Rindge" is my signature. This communication was sent by me or by my authority to the board of supervisors.

Q. I will ask you if this was not sent at about the time it was dated, May 11th, 1918.

Mr. Anderson: So stipulate.

712 Q. Now, in response to, or after you had sent the communication, did you get a notice from the board of supervisors, advising you of the fact that a meeting would be held? A. I got one from Carl Haas, deputy county counsel. After that communication I then attended this second meeting of the board, held some time in the spring of the year. I now recall the fact that there was two meetings instead of one at which I was present. At both of those meet-
713 ings our attorneys were present. At both of those meetings, talks were made to the board of supervisors by myself and by Mr. Anderson the first time, Mr. Anderson and Mr. Newby the second time, and Mr. Guernsey.

Q. So that the second meeting was the one in May, yourself and two of your attorneys and Mr. Guernsey all addressed the board in opposition to the project of a road through the Mal-
714 ibu? A. They were all opposing putting the road through.

Mr. Burnell: That is all.

Mr. Anderson: Now, if Your Honor please, I desire at this time to offer in evidence the document identified as having been sent by her on May 8th, 1918, and relating to the meeting, concerning which she has been examined. I will read this into the record. "Los Angeles, Cal., May 8th, 1918. To the Honorable Board of Supervisors of Los Angeles County. Gen-

715 tlemen. The undersigned hereby respectfully petitions that all further procedings for the construction of a highway through the Malibu Ranch be abandoned, and that the condemnation suit now pending in the Superior Court of the State of California, in and for the County of Los Angeles, commenced for the purpose of condemning a right of way for road purposes, be ordered dismissed. In support of such pe-
716 tition we respectfully represent:

First: That said suit was commenced prior to the declaration of war by the United States against Germany and her allies, and conditions are now quite different from those existing when these proceedings were commenced.

Second: That it is the policy of the federal government announced not only by heads of departments, but by an act of Congress adopted April 5th, 1918, that all demands for public
717 improvements in excess of $100,000 should be submitted to a commission appointed by the President, to determine whether or not the contemplated improvement is essential to the successful conduct of the war, upon which all of our resources must be concentrated.

Third: The condemnation of a right of way through the Malibu Ranch and the construction of the contemplated highway would cost approximately $1,000,000 and by no stretch of the

718 imagination can such improvement be considered as a war essential.

Fourth: In addition to the great cost of such construction work it would also entail upon your petitioners unnecessary expenses and hardships in addition to those heretofore suffered in defense of fruitless litigation.

Wherefore, your petitioners respectfully represent that the public interest would best be served by abandoning the contemplated con-
719 struction of a highway through the Malibu Ranch and the condemnation suit now pending for that purpose, at least until after the war; and we request that a time be fixed for a hearing and consideration of this petition.

Respectfully submitted,

MAY K. RINDGE.

RINDGE COMPANY,

M. K. RINDGE."

720 The Witness: This meeting that was held later in that year 1918 was in response to this petition. In general substance what the contention was that was made before the board and what my attorneys asked them to do was to put the road through the Triunfo instead of the Malibu. Mr. James Anderson was present and not you. This meeting was with Mr. James Anderson and Mr. Newby and Mr. Guernsey, and they spoke in our behalf, in pursuance of this

721 petition you have just read. The substance of what they requested the board at that time was to defer it until after the war, on account of the war conditions and that is the only matter that was discussed by them so far as I can say.

Q. Now, Mrs. Rindge, you were shown this letter or communication of July 7th, 1917, and which we have stipulated was signed by you. I will ask you if you know whether or not it contained an enclosure. A. I think it contained
722 Judge Bean's decision.

Q. I will show you this document and ask you if that is the enclosure that went with it (indicating a document.) A. Yes. That is the document that accompanied it (indicating a paper).

Mr. Anderson: Now, if the court please, I offer the petition and the accompanying document for the purpose of showing what was done
723 by Mrs. Rindge and the Rindge Company in connection with the bringing about of this meeting in question. The petition in question was then read into the record and was as follows:

"Los Angeles, California, July 7, 1917.

To the Hon. Board of Supervisors,
of the County of Los Angeles,
State of California.

Gentlemen:

Our attention has been called to an article published in the 'Santa Monica Outlook' of June

724 30, 1916, in which it is stated that "The Santa Monica-Ocean Park Chamber of Commerce is assisting the owners of ranches in the Malibu Mountains in circulating a petition to the county supervisors to open a road that will enable the ranch owners to convey the necessities of life to their homes.'

The proposed petition is set out in full in this article. As it will doubtless come before you, it is unnecessary at this time to set it out here.
725 Suffice it to say that it in effect recites that by reason of the recent decision of the Supreme Court of this state in the case of People vs. Rindge (commonly known as the Maliby road case), which was decided in our favor, and by reason of the alleged failure of our recent legislature 'to pass proper legislation by which the state and counties of Los Angeles and Ventura would be enabled to build the military road
726 through the Malibu Ranch,' and unless the petitioners can look to you 'for immediate relief' they will be placed in danger of losing their holdings 'and of being forced to part with them to those who are more fortunate because of said Supreme Court's decision and the said Act of the Legislature,' and further reciting that they desire to have rights of way so that they 'may have such necessities of life across the Malibu Ranch unhindered and without molestation.'

727 In the first place we desire to most emphatically assure your board that we have not now and never had any intention of attempting to acquire and do not desire to acquire any of the properties of any of these 'settlers' although we have always rested under the belief that many of these 'settlements' were made with the view to eventually annoying us into buying the 'settlers' out.

728 This, however, has nothing to do with the real situation and we only refer to it because of the crude intimation in this proposed petition, that the 'settlers' may be compelled to sell out to us who are undoubtedly referred to as those 'who are more fortunate because of said Supreme Court's decision and the said act of legislature.'

729 The litigation by which the county of Los Angeles (acting under the name of the People of the State of California) and the United States Government, have attempted without any tender or offer of compensation, to force various roads through our properties (the Malibu Ranch), having been in the courts for so many years and having been so various in its manifold ramifications, we feel reasonably sure your present board has but a slight understanding of that litigation, of its tremendous expense both to us, to the county and to the federal government, and of the absolute unjustness of it to us from its inception.

730 When the Malibu Ranch was acquired by the undersigned, May K. Rindge and her husband Frederic H. Rindge, early in 1892, while there were several settlers to the north of the ranch and on the ocean side of the mountains in Los Angeles county, there were no settlers to the west of the ranch and on this side of the Ventura mountains, excepting a family by the name of Harris and certain relatives or connections of that family.

731 After acquiring the ranch and in order to avoid any questions, as to roads across it, any of which, if public, would be extremely detrimental to the ranch interests in view of its peculiar situation and many miles of unguarded thickly-wooded canyons and the consequent liabilities to fires and other depredations from irresponsible campers and other trespassers, Mr. Rindge bought out and acquired the interest of all of the settlers in the mountains to the north

732 excepting two, one being Marion Decker, who had a ranch to the north in the mountains up Encinal canyon.

Subsequently and before the litigation, which has been so extensive and expensive, was commenced, other settlers came in and were treated with the utmost consideration by Mr. Rindge, he, in many instances, permitting them to build roads from his ranch roads to their places, but always carefully insisting that these were merely

permissive users and always most vigorously insisting that his ranch roads were in no sense public highways. None of these settlements were west of the ranch.

About 1894, Mr. Rindge proceeded, for ranch purposes, to fence in the eastern portion of the ranch and placed gates across his ranch roads, giving the various settlers keys with the right accorded to them of using the ranch roads, and of letting their friends and people having business with them enjoy a similar privilege (keys for that purpose being left at various places in Santa Monica).

This condition continued harmoniously for some months (perhaps a year or more) when some question was raised by the attorneys for Mr. Decker, who had had some controversy with Mr. Rindge over the use of certain specially constructed private roads, and the result was an agitation of the matter which resulted in a hearing before the board of supervisors in the fall of 1895.

Subsequently and for some years, Mr. Rindge, during his life-time and his representatives after his death, insisted upon the private character of roads through the ranch and did all that they could, although not always successfully, to prevent travel over them.

Finally this state of affairs culminated in the road litigation. In the latter part of 1907, the

736 United States Government commenced an action whereby it was sought to have it decreed that cross roads running down the mountain canyons to the beach road from the ranches of certain settlers, which cross roads amounted to thirteen in number, should be decreed to be public highways created as a matter of necessity over the Malibu Ranch and incidentally that the beach road be decreed to be a public highway by virtue of alleged long usage. In this case
737 an injunction was issued preventing in effect any interference with travel along the beach road and that injunction remained in force until the final decision of the Federal Court in favor of the owners of the ranch.

Incidentally it may be remarked that this case, which proved to be wholly without merit, *caused* the federal government an enormous sum of money (estimated at about $100,000) and
738 also proved very expensive to the owners of the ranch.

At the time of the issuance of this injunction, there were no settlers whatever west of the ranch and this side of the Ventura mountains.

Shortly after the commencement of this federal action, the county, in the name of the People of the State of California, commenced its suit and on May 11, 1910, a judgment was entered therein in favor of the county and against the owners of the ranch, decreeing that a road

739 existed twenty feet in width extending from the eastern end of the ranch at Las Flores canyon to the western end of the ranch to the Ventura line, and enjoining and restraining the ranch owners, defendants in that action, from in any way interfering with the use of that road.

This injunction remained in force even after the federal injunction was dissolved by reason of the decision in the federal case in favor of the ranch owners.

740 On November 8, 1913, Judge Oster, who rendered the decision in People vs. Rindge, granted a new trial of that case insofar as the western end of the alleged road was concerned, which new trial covered that part of the purported highway west from La Chusa Canyon to the Ventura line, but denied the motion for a new trial as to the eastern end extending easterly from La Chusa Canyon to Las Flores.

741 In the meanwhile, and taking advantage of the pendency of injunctions and obviously acquiring no rights thereby, the present complaining Ventura county 'settlers' settled on their places in Ventura county and (naturally against the wishes of the ranch owners, but because of the injunction and without any authority on their part to prevent them from so doing) made use of the adjudged public highway through the ranch.

742 Of course, upon the granting by Judge Oster of the motion for a new trial as to the western end of the ranch, their right to use the so-called public road from La Chusa Canyon to the Ventura line ceased, but nevertheless, they continued to use it without any serious objection by the ranch owners until the ranch owners built certain new expensive private roads, erecting locked gates across them. Then, after the decreed 'public road' had, by reason of neglect to
743 keep it up, become practically impassable, particularly at certain seasons of the year, these Ventura county 'settlers,' aided by one of them named Fitzpatrick, proceeded to break through the private gates on these private roads of the ranch owners and to forcibly and unlawfully make use of them. This, in brief, resulted in an injunction suit against Fitzpatrick and his co-settlers, which they never even attempted to defend and in which an injunction was issued
744 and is still in force.

The ranch owners, in view of this untoward and unlawful action of these Ventura ranch owners, then took proper and vigorous steps to prevent the use by them of any of the ranch roads not covered by the injunction in the Oster case.

The result of this was an attempt on the part of your board and of Mr. Joyner, who superintends roads under your authority, to compel the

745 opening and use of that portion of the road lying between La Chusa Canyon and the Ventura county line and covered by the order of Judge Oster granting the motion for a new trial.

The result of this was an action for an injunction brought by the ranch owners against Mr. Joyner and your board and certain other county officers to restrain this trespass; and this action, together with the portion of the case of People vs. Rindge affecting the same section of
746 road, was tried before Judge Pat R. Parker, of Mono county, sitting in Extra Session of our Superior Court, the trial lasting more than forty days and involving an enormous expenditure of money both by the county (which was assisted by special counsel employed by you) and by us.

Subsequent to the trial of these two branches of this long, drawn-out and expensive litigation, the Supreme Court of the state of California
747 reversed Judge Oster's order, denying the new trial as to that portion of the Malibu Road lying between Las Flores and La Chusa, and following upon the heels of that, Judge Parker recently decided the western portion of the case of People vs. Rindge and the case of Rindge vs. Joyner in favor of the ranch owners.

In other words, after many years of long, tedious and enormously expensive litigation, the owners of the Malibu Ranch have been com-

748 pletely vindicated by the courts at every point in their effort to maintain the private character of their roads across the ranch, a large portion of which roads were constructed by the ranch owners at a very heavy expense running into many, many thousands of dollars.

Under these circumstances, it seems to us that your board should most seriously hesitate before putting the county to any further expense in a matter which has proven so disastrously expen-
749 sive already and which so far has proven to be without any merit insofar as the county, state and the United States government are concerned.

We may add that as to these Ventura county 'settlers' and as to the 'settlers,' few as they are, to the north of the ranch, the evidence in the Federal Court shows, and the fact is, that while it would doubtless be more convenient for them
750 to make use of the roads through the ranch in order to get to Santa Monica and Ocean Park for the purchase of supplies, they nevertheless can, with added difficulty it is true, reach supply centers to the north and west, and are not, therefore, under any absolute necessity of using the roads through our ranch.

We may add also that the pernicious activity of the Ocean Park and Santa Monica Chamber of Commerce is easily explainable on the ground that they desire to attract even the small trade

751 that might come to their community from these straggling mountain settlers.

Finally, the proposed road, if the county should undertake to go to the enormous expense of attempting to open it would almost entirely contribute to the benefit of persons residing beyong the Los Angeles line in Ventura county, and would scarcely afford a modicum of benefit to any resident of Los Angeles county. Should the petition in question be presented to you and
752 you should feel that any further consideration of it is necessary, we most respectfully request that you permit us a hearing before taking any definite action upon it.

Yours very truly,
(Signed) MAY K. RINDGE,
RINDGE CO.
By M. K. RINDGE, *Pres.*"

Mr. Burnell: I would like to have that docu-
753 ment remain in the room until we are through. Now, so far as the matter accompanying it the pamphlet, so far as the reading of that is concerned, we waive that, and we ask leave that it be filed as a copy.

This document was and is as follows:

754 Malibu Rancho Roads Proven to Be Private Property.

To the Interested Reader.

After ten years of litigation of roads through Malibu Rancho, the Rindge Company has won every one of the cases brought against it by petty politicians of Los Angeles, who have been able to keep these cases alive, and thus keep the Malibu Rancho property open and subject to
755 depredations of professed settlers many of whom in reality are caretakers for the owners of mountain lands that have been taken up since the litigation was started, much of it through the Timber and Stone Act at $2.50 per acre.

These suits have cost the taxpayers in the neighborhood of $200,000.00, so we are told, which amount of money would have paved roads for them to the State Highway, only a short distance away.

756 Our rancho, which grows large crops of barley, barley hay, oats, oat hay, alfalfa and diversified crops, and raises many head of horses, cattle, sheep and hogs, has suffered greatly from fires, and other losses affecting all of these products, by people passing through, and so that you may understand the true situation, we are sending you a copy of the two most prominent decisions, which will give you a very good history of the case.

757 Trusting you will find them instructive as well as interesting, we remain,

Respectfully,

RINDGE COMPANY,

By M. K. Rindge, *President.*

In the District Court of the United States for the Southern District of California, Southern Division.

United States of America, complainants, vs.
758 May K. Rindge, as executrix of the last will and testament of Frederick H. Rindge, deceased. May K. Rindge, individually. Newell Dyke Darlington, The Pacific Mutual Life Insurance Company, of California, a corporation. Hueneme Malibu, and Port Los Angeles Railway, a corporation, defendants. In Equity.

A. I. McCormick, U. S. Attorney, Los Angeles, California.

H. L. Dunnigan, Special Assistant U. S. At-
759 torney, Los Angeles, California, Solicitors for Complainant.

James A. Anderson, Los Angeles, California.

E. E. Millikin, Los Angeles, California, Solicitors for Defendants.

R. S. Bean, District Judge:

This is a suit brought by the government against May K. Rindge, et al., to compel the abatement and removal of certain gates and fences erected and maintained by Mrs. Rindge

760 on her own premises, on the ground that the same are obstructions to public highways and way of necessity and unlawful enclosure of public lands of the complainant, in violation of the Act of Congress of February 25, 1885 (23 St. at L. 321).

The case as made by the record is this: At the time of the cession of California to the United States by Mexico, there was a tract of land of one hundred thousand acres or more in
761 what is now Los Angeles county, lying along the coast from the Rancho Santa Monica to Point Mugu, a distance of about thirty-five miles. It was from five to ten miles wide, and extended north to and beyond the Calabasas road, then and now one of the main highways from Los Angeles to points north. It was bounded on the south by the Pacific ocean, and on the north, east and west by land previously
762 granted by the King of Spain to private individuals. A range of mountains known as the Santa Monica mountains extends through the tract east and west, three or four miles back from and approximately parallel with the coast, and between it and the Calabasas road.

In 1852 the successor in interest of one Tapias applied to the board of commissioners to ascertain and settle private land claims in the state of California (as provided by the Act of Congress of March 3, 1851, 9 Stat. 631), for an

order confirming his title to a portion of the land referred to, alleging it to have been granted to Tapia by the King of Spain in 1804. Thereafter such proceedings were had that on October 24, 1864, a decree was regularly made and entered by the United States Court for the southern district of California confirming the petitioner's title to the land "known by the name of Topanga, Malibu ——— Sequit, extending from a place named 'Topanga,' the dividing line between these lands and the Rancho of 'Santa Monica' on the southeast along the Pacific to a point called Mogu on the northwest and bounded on the northeast by a ledge of rocks on the top of and extending the whole length of a range of mountains; and adjoining the lines of the Ranchos of 'Las Virgeues,' 'Triunfo,' 'Santa Ysabel' and 'Conyo.' Said confirmation being hereby made to the extent of three square leagues within said mentioned boundaries." There were more than ten square leagues within the exterior boundaries of the larger tract described in the decree. The portion thereof, the title to which was confirmed to the petitioner, was surveyed by the government of the United States in 1871, and in August, 1872, patent was regularly and duly issued therefor. It is known and referred to in the record as the Malibu Ranch, and lies along the coast for about sixteen miles west from Las Flores Canyon, a point

766 some three or four miles west of Topanga, and is from one-and-a-half to two-and-a-half miles wide and contains about thirteen thousand acres.

The remainder of the tract was surveyed as public lands in 1896 or 1897. A small portion thereof has been patented to settlers, but the larger area still remains a part of the public domain. The Malibu Ranch lies along the foot of the mountains referred to in the decree, two or three miles south of the summit. Extending
767 from the summit of the mountains through the public lands and across the ranch to the ocean are numerous spurs or ridges, in the buttom of the canyons between, which spurs are limited acres of agricultural land. The sides of the canyons back of the r[illegible] are in many places so steep and rugged as practically to prevent access north and south from one to the other. The land north of the mountains and between that and the Calabasas road is more or less broken
768 with small valleys in the canyons.

Prior to the acts complained of in this suit the Malibu Ranch was for the most part wild, unenclosed land, used principally for grazing stock. From time immemorial there has been more or less travel onto the ranch from the east by persons on horseback, with wagons and vehicles, and an occasional traveler across the ranch to and from Ventura and points north. The travel was on the true ocean beach except at certain

769 points where it was not possible to use the beach, and then over the hard ground adjoining. About 1884, and while the ranch was unenclosed, persons commenced to enter upon the unsurveyed public lands in the canyons back of it and make settlements, traveling along the beach from the east to the particular canyon in which they settled, and then over and across the ranch on roads or ways built by them. There has always been considerable controversy between the set-
770 tlers and others and the owners of the ranch as to the right of the former to use the roads, or to travel over or across the ranch.

About 1905, or shortly prior thereto, the owner of the ranch, at considerable expense, constructed a good substantial private wagon road and commenced the construction of a railroad along the front of the ranch near the beach. These improvements naturally attracted atten-
771 tion, and the publicity given thereto caused a large number of persons to visit and examine the public lands back of the ranch with a view of settlement thereon, traveling over the ranch, to the annoyance and inconvenience of the owner. To protect her property from injury by travelers and from fires set by them, the owner built in 1907, and now maintains, a fence a few hundred yards long across the beach road, where the mountains come down close to the ocean at a point three or four miles from the east end of

772 the ranch, which with other fences and natural barriers on the west and north, practically encloses the ranch, and she has also maintained fences and closed gates across the beach road at other points to the west.

This suit was brought by the government for a decree enjoining and restraining the defendant from maintaining such fences or obstruction on the ground: (1) That the beach road and the roads used by the settlers up the various canyons
773 are public highways and necessary for access to the lands of the complainant. (2) That at the time patent was issued for the ranch there was reserved by implication to the government and its grantees a right of way over the land so patented to the public land back thereof, because there was and is no other practicable way to reach such land from a public highway. And (3) That the construction and maintenance of
774 the fences and gateways in question, although on the defendant's own land, constitute an unlawful enclosure of public lands within the meaning of the Act of Congress of February 25, 1885.

The record is exceedingly voluminous, consisting of many thousand pages of testimony and numerous exhibits showing the nature, extent and character of the travel over and through the ranch, the topography of the country back of the ranch, its accessibility from a highway on the north and across the mountain

775 range, the cost and expense of building roads over the government land and the like. The prodigious industry of counsel in abstracting and classifying the testimony and their able and exhaustive arguments have relieved the court of a vast amount of labor, and I take this opportunity to express my appreciation thereof. Without the aid thus afforded an intelligent understanding of the case would have been almost hopeless.

776 A great bulk of the testimony and a considerable portion of the argument were directed to the issue concerning the existence of a highway along the front of the ranch and next to the ocean but, as I view the matter, it is unnecessary to consider that question. The evidence signally fails to show that the roads leading from the beach across the ranch are public highways, and if they are not the government has no concern with the controversy as to the existence of such

777 a way along the beach since it has no access thereto by a public way. All the roads across the ranch were built and maintained by the settlers, either with the express or implied consent of the land owner and were nothing more than mere private ways. There are twelve such roads known in the record as the Las Flores Canyon road, the Bieule road, the Carbon Canyon road, the Malibu Canyon road, the Puerco Canyon road, the Corral Canyon road, the Sosto Canyon road, the Latigo or Escondido Canyon road, the

778 Suma Canyon road, the Trancas Canyon road, the Encinal Canyon or Decker road, and the Nicholas Canyon road. None of these roads were established by public authority nor has any public money ever been used in their construction or maintenance or repair, and they have never been recognized as public highways by the public authorities, and have never been fenced or in any way separated from the surrounding territory.

779 The Las Flores Canyon road is along the east end of the ranch and but a small portion of it, if any, is on the ranch. It has been traveled since 1889 by two or three settlers and by hunters.

The Bieule and Carbon Canyon roads were built in 1890 and 1898, respectively, by express permission of the owners of the ranch a[illegible] has been very little travel over either of

780 The Malibu Canyon road was built so[illegible]ame after 1885 and extends up the canyon about half a mile beyond the ranch line and ends on private land. The canyon is steep, has rugged sides and there is no public land, as I understand the record, accessible from this road or any possible extension thereof. There has been no particular travel over [illegible]d except by a few settlers in the canyon and by hunters and trappers.

The Puerco Canyon road was built by Carey

781 and Daman in 1897 or 1898, and was used by them.

The Sosto Canyon road was built by Swinney about 1894 with the permission of the owners of the ranch.

The Latigo or Escondido Canyon road was built by Reeves and Swinney after their settlement in 1890, and a part of it by permission of the owners of the ranch.

The Suma Canyon road was built by Bandy
782 after his settlement in 1894, and used by him.

The Trancas Canyon road was built by Haworth about 1885 in order to reach his home.

Decker settled in Encinal Canyon in 1885 and has continued to reside there ever since. The road from the beach across the Malibu Ranch was built by him in 1885 or 1886, and has since been extended to the public lands back of his place and over and across the mountains inter-
783 secting the Calabasas road on the north. There are several settlers along this road near the summit of the mountains who sometimes use the road to the south across the Malibu Ranch but more frequently the road to the north.

The Nicholas Canyon road was built by Swinney and Nicholson for their own use some time after 1885.

Each of these roads was therefore built after the year 1883 by settlers to reach their claims, and was used for that purpose and by occasional

784 hunters and pleasure seekers. The roads were unquestionably private ways in the first instance, and it does not appear that the land owner ever consented to their change to public highways, nor is there any element of estoppel shown to deprive her of her rights as owner of the fee. The mere fact that the roads were used by persons not settlers without objection from the land owner will not make them public highways. (Elliott on Roads and Streets, Sec. 5.) The act
785 of the legislature of California of February 28, 1883, which has since been in force, and is now sections 2618 and 2621 of the Political Code, declares:

"In all counties of this state public highways are roads, streets, alleys, lanes, courts, places, trails and bridges laid out or erected as such by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made
786 such in actions for the partition of real property." (Section 2618.)

"And no road or traveled way used by one or more persons over another's land shall hereafter become a public road or byway by use or until so declared by the board of supervisors, or by dedication by the owner of the land affected." (Section 2621.)

Under these statutory provisions a road over another's land does not become a public highway by mere use alone. Unless it is established by

787 public authority there must be an abandonment or dedication to the public by the land owner. The abandonment or dedication need not be by express grant nor evidenced by writing, nor indeed be in form of words, oral or written, but may be inferred from other circumstances. It may be established in any conceivable way by which the intention of the owner to dedicate or abandon the land to the public for a public way can be manifested (Elliott on Roads and Streets,
788 Sec. 137. People vs. Davidson, 179 Cal. 166. Suisman vs. San Luis Obispo, 126 Cal. 536. Plummer vs. Sheldon, 94 Cal. 533) and may be presumed from adverse user by the public under a claim of right with the knowledge of the owner for a period of time corresponding to that fixed for conferring title by prescription. (People vs. Myring, 144 Cal. 351. Same case, 77 Pac. 975. Schwerdtle vs. Placer Co., 41 Pac. 448.
789 Hartley vs. Vermillion, 74 Pac. 987.) But there must be evidence showing an intention to abandon or dedicate the land to the use of the public, or proven facts from which such intention can be fairly deducted, and unless the intention expressly appears or can be inferred from acts done or omitted, there is no proof of dedication abandonment. (Elliott on Roads and Streets, Sec. 138-173. Silva vs. Spangler, 43 Pac. 617. Irvine vs. Dixon, 9 How. 10. Coburn vs. San

790 Mateo Co., 75 Fed. 520.) The question is always one of fact.

Now, the occasional and irregular travel across the ranch by the land claimants and hunters, the principal users of the ways, without more, is not evidence either of the abandonment or dedication of the land to the public use by the owner, nor does it constitute the adverse use necessary to establish a presumption of such dedication. As the cross roads are not high-
791 ways, and there is no access by such a way across the ranch from the public domain to the beach road, the government has no interest in the question whether the latter is a public highway or not. The establishment and maintenance of highways, as such, over privately owned lands, belongs primarily to the state authorities, and not to the government of the United States. The character of the beach road is now in litigation in the state courts and should be deter-
792 mined there. This suit is maintained by the government as a landed proprietor, and on this branch of the case it is entitled to no greater relief than if it had been brought by a private owner claiming that a public highway leading to his land was unlawfully obstructed. Certainly a private owner of land back of the Malibu Ranch would have no standing in a court of equity to enjoin the obstruction of the beach road, unless he could show access to such road

793 over some lawful way. The government has no other or greater rights.

The alleged ways of necessity: The defendants claim that ways of necessity, as such, were unknown to the Spanish law, and since they derive title from the King of Spain, their property cannot be so burdened. The complainant challenges the soundness of this position and argues that in any event the grantee from the King of Spain and the complainant were ten-
794 ants in common of the larger area described in the decree of confirmation of August, 1864, and the subsequent survey and patenting of the ranch was in effect either a grant from the government of the United States or a partition of the property, and hence the common law doctrine of ways of necessity is applicable thereto.

I shall not stop to consider these questions, interesting as they are, but shall assume for the
795 purpose of the decision that the defendant holds title as grantee of the government of the United States, the view most favorable to the complainant.

In considering the government's contention, it is important to get a clear view of its position and the consequence thereof. In effect it is, that at the time the patent was issued there was reserved by implication to it and its subsequent grantees, however numerous, rights of way to be subsequently located over and across the

796 ranch to reach the several portions of the government land, although there is no such provision in the patent, and there was no law in force at the time reserving such a right. The claim is that there was so reserved a way along the beach practically the entire length of the ranch, and also numerous ways across the ranch and up the several canyons. These roads will, if decreed, be in effect public highways, although ways of necessity are essentially private ways.
797 The government is not asserting a right of passage over the ranch for governmental purposes alone, or as a mere land owner, but seeks to have ways established for the use and benefit of present and subsequent settlers on the public domain. In other words, it is asserting rights of way for the use of such of the public as may have occasion to visit the public domain for settlement, pleasure, business or any other lawful purpose.
798 The logical result of this contention is that a way is reserved by implication for the use of such persons over all land granted by the government to reach the remaining subdivisions when there is no other reasonable or convenient means of access, notwithstanding there is no such reservation in the grant, and there is no public law so providing. A doctrine so contrary to the general theory of the rights acquired by patentees of public lands and guaranteed to private owners by the Constitution, challenges at-

799 tention. Its effect is strikingly apparent in the case at bar. The result of the government's position, if sustained, will be to divide the Malibu Ranch by what are in effect public highways into ten or twelve different tracts, thus materially impairing its value and usefulness to the owner, and that without compensation. It is, in my judgment, very doubtful whether the doctrine of implied ways of necessity has any application to grants from the general govern-
800 ment, under the public land laws (Pearne vs. Coke, Vol. 90 Tenn. 619. Bully Hill C. M. & S. Co. vs. Bruson, 87 Pac. 237). If it exists at all it can be invoked against the government and its grantees as well as in their favor. Hence every grantee of a portion of the public domain from the time the land laws were extended over the same, and those succeeding to his title would have an implied right of way over the surround-
801 ing and adjacent public lands, and a junior grant thereof if necessary to reach his own land, and a junior grantee and his successors in interest would have such a way over a prior grant under similar circumstances, simply because they derive title from a common source. The public domain is disposed of under general laws and the rights conferred and reserved are defined by such laws, and rules and regulations made in pursuance thereof. If the sale or conveyance of one portion of such domain prevents access

802 to another, it would seem to be a contingency which the government was bound to contemplate in making the conveyance. By public statute Congress has granted rights of way for the construction of highways over public lands not reserved for public use. (Act of Congress, July 20, 1866, 14 Stat. at L. 253.) Beyond this and the full protection of the title which it confers, it would seem that the government owes no duty or obligation, and reserves to itself or its
803 subsequent grantees no interest in the land granted except such as may appear on the face of the grant, or the law under which it was made, or be declared by a general statute in force at the time the interest of the grantee was acquired. But assuming that the doctrine of ways of necessity can be invoked by the government for the benefit of its grantees, as against a prior grantee, is there any ground for its application here? What is commonly called
804 a right of way from necessity arises when the owner of a tract of land conveys a portion thereof to another and there is no access from a public highway to the part so conveyed except over the remaining lands of the grantor or a stranger, or when the owner sells a portion of his land and the part remaining is inaccessible except over the land sold or that of a stranger. It is not strictly accurate to say one man has a right of way of necessity over the land of another.

805 The necessity of one man, however great, will not of itself give him an interest in the property of another or justify entry on another's land. The fact that there is no way to the land sold except over the remaining land of the grantor, or that the remaining land of the grantor is not accessible except over the land granted by him is only a circumstance resorted to for the purpose of ascertaining the intention of the parties to the grant, and to raise an implied grant or
806 reservation of a way, because where a thing is granted or reserved the law implies a reservation or grant of that which is necessary to the enjoyment of the thing granted or reserved. (Goddard on Easements, P. 262. Bishop on Non-Contract Rights, Ed. 1889, Sec. 872. Jones on Easements, Sec. 154.) This rule is usually invoked in favor of a grantee, but has been held to apply where one sells land surrounding
807 other lands belonging to him, thus cutting off access to his remaining lands except over the granted premises. It is said that by implication he reserves a way over the land granted, even though there is no such provision in his deed and he conveys with covenant of warranty. (2nd Washburn on Real Property, 282.) But in such case the rule of strict necessity applies, because the grantor is claiming something in derogation of the deed which he has given, and the title which he has conveyed, and if he in-

808 tends to reserve any greater right over the land granted it is his duty to expressly so provide in the grant. Neither inconvenience or even great inconvenience is enough. There is no implied reservation of a way by implication in favor of a grantor unless in case of strict necessity and when he has no other practical means of approach to his land. (Washburn on Easements, 2nd Ed., 219. Jones on Easements, 155-318. 14
809 Cyc. 1171-6.) As said by the Supreme Court of California in Kripp vs. Curtis (71 Cal. 62, 11 Pac. 879): "The right of way from necessity must be in fact what the term naturally imports and cannot exist except in cases of strict necessity. It will not exist where a man can get to his property through his own land. That the way over his own land is too steep or too narrow or that other and like difficulties exist does not alter the case." A right of way over another's
810 land is, in its final analysis, an interest therein and when sought on behalf of a grantor contrary to his deed it should never be implied except in case of strict or extreme necessity. That it will be more convenient or desirable than some other way is not sufficient. The fact that there is a bluff or mountain across the grantor's land which is difficult to pass, or that a way through his land is obstructed or will be expensive to construct, or is steep or hilly, or that the public way to which he has access is in such a bad

811 condition that it is impossible to haul more than small loads over it, and the like, is no reason for implying a grant or reservation of another way. (Goddard on Easements, 270. Gains vs. Lencord, 102 Am. Rep. 109. 6 La. Annual, 118. McDonald vs. Lindall, 3 Rawls, 492. Dee vs. King, 50 At. 1109. Same case, 73 Vt. 375. Nichols vs. Luce, 24 Pick. 102.) Implication of grants or reservations of ways of necessity are
812 looked upon with jealousy and construed with strictness because they are contrary to the deed of conveyance. It is only the necessity of the case that will carry such a way.

Now, applying these principles to the facts and the result, in my judgment, is manifest. At the time the patent was issued for the Malibu Ranch, access to the ranch and to the canyons leading through it to the public lands, from the coast, was most difficult. It was impossible to
813 do so from the west with any kind of a vehicle, and it was practically impossible to get within eight or ten miles of the ranch from the east with a wagon on any kind of a road. The way from the east was along the beach through dry sand, over rocky points and was beset with so many difficulties that it was rarely used. On the other hand, the public land north of the ranch was accessible at that time from the Calabasas road, and it would seem, as stated by Mr. Justice Sloss in a similar case that "this

814 circumstance alone is fatal to the existence of a way by necessity." (Corea vs. Higuera, 153 Cal. 451. 95 Pac. 882.) It is true that in order to reach the public land south of the mountain, and west of Malibu Canyon from the Calabasas road it is necessary to cross the mountains, but they are not impassable barriers. The evidence shows that roads can be constructed across them and it is doubtful whether, if the con-
815 ditions were now the same as when patent issued, it would cost more to build such roads than to construct ways to the public lands from the east. One road has already been constructed across the mountains connecting with the Ensinal Canyon or Decker road, and is now being used by the settlers. Others can be built to serve the land between this road and the Malibu Canyon. The land east of Malibu Canyon is accessible by an extension of the Las Flores
816 Canyon road. The fact that these roads would be expensive to construct and would be steep and difficult, and not as convenient or desirable as ways from the east or south does not alter the case. They will afford access to the government land, and therefore it cannot be said that there is no way thereto other than across the ranch.

There is a vast amount of testimony in the record as to estimated cost of building roads from the north to reach the government land

817 south of the mountains. The witnesses differ widely as is often the case with experts. I do not think it is necessary to examine the evidence in detail. All agree that such roads can be built. The evidence for the government tends to show that it will cost from seventy-five to one hundred thousand dollars to build highways of not to exceed a maximum grade of twelve per cent, and what are designated as "hap-hazard roads" can be built for about two-fifths of that
818 sum. Experts of apparenty equal intelligence and experience testify for the defendant that good substantial roads such as are common in similar mountainous regions, and which will serve the purpose of settlement, can be constructed at a comparatively small outlay. But taking the estimates of the government's witnesses as correct, I am not prepared to say that the cost of building the roads would be so dis-
819 proportionate to the value of the land as to be prohibitive. The question is not to be determined by comparing the value of any particular subdivision with the cost of a road to it, but the relative value of the entire tract to be served with the cost of building roads to reach it. It will no doubt cost more to build roads under present conditions from the north than from the south, but neither that fact nor the fact that it will be more convenient for settlers south of the mountains to approach their homes from the

820 ranch side, is any reason why the owners of the ranch should be compelled to suffer the loss and inconvenience of having numerous public highways across their property without compensation therefore.

There is another reason why, in my judgment, the government's position is unsound. The necessity from which the law implies a grant of reservation of a way must exist at the time of
821 the grant, and as to the whole tract conveyed or reserved. Neither a grantee nor a grantor can subsequently subdivide his land and sell off a portion in such a manner as to create a way of necessity in favor of his grantees over the parts previously granted (Lankin vs. Terwilliger, 22 Ore. 97. Jones on Easements, P. 304) unless perhaps the way rests in grant or the easement is an apparent and continuous one, existing and in use at the time of the conveyance. (3rd
822 Washburn on Real Property, P. 284.)

If the land described in the decree of August, 1864, had belonged to a private individual and he had sold the portion now owned by the defendants and conveyed the same by absolute deed without reservation, it would hardly be contended that he could subsequently subdivide the remaining area into 80 or 160-acre tracts and by conveying the same to sundry persons invest in each a right of way over the portion

first conveyed, and it is not believed the government has any other or greater rights.

What has already been said would seem to dispose of the question that the fences complained of should be abated because in violation of the Act of Congress making it unlawful to enclose public lands since, if, as I conclude, the public lands can be reached without crossing the ranch, the fences in question do not constitute an enclosure thereof, or an obstruction to an entry thereon. But, however that may be, the fences are on defendant's land a considerable distance from the exterior boundaries thereof. The one first encountered, in journeying to the public lands through the ranch, is three or four miles from the east end of the ranch, and cannot be approached without traveling for that distance over defendant's property, unless it is across a public highway, a question not important to the point now under consideration. After passing the fence it is necessary to travel several miles over defendant's land before reaching the public domain. The other fences are across the beach road west of the one just referred to. The abatement of the fences therefore would not permit access to the public domain without trespassing on privately owned land, and I am unable to comprehend how such structures can be held to be in violation of the Act of Congress. The Fence Law, as its title

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826 implies, was intended to prevent unlawful occupancy of public lands. To that end it makes the enclosure of such land illegal (Sec. 1), and forbids obstruction to or prevention of the entry thereon, or free passage or transit over or through the same by force, threats, intimidation or by unlawful fences or enclosures (Sec. 3). But it was not intended to interfere with the use and enjoyment of private property unless such use is a mere subterfuge for enclosing or
827 preventing access to the public domain. I do not understand that Congress intended to interfere with the use of privately owned lands or the erection of such fences or structures thereon as are reasonably necessary for the full and free enjoyment thereof, or to permit or sanction trespass thereon, or confer or recognize a right of passage over the same. It was not concerned with the initiation or creation of means of ac-
828 cess to public lands, but with the matter of keeping the boundaries thereof open, so that all persons who could lawfully reach the same, might enter. If it had intended or contemplated, as now claimed for the government, the use of a way over privately owned lands to reach the public domain, it would no doubt have so indicated, and probably made some provision by which such way could be fixed and located.

It is true that if one builds a fence on his own land which does not inclose the same, but

829 the natural effect of which is to enclose public lands, either separately or together with his own, he will be held to have violated the statute, regardless of the actual intent with which the fence was built or maintained, because every person is presumed to intend the natural and probable consequence of his own act. (Homer vs. U. S. 175 Fed. 741. Golconda Cattle Co. vs. U. S., 201 Fed. 282.) But I know of no decision holding that a fence built on one's own land in
830 good faith for the sole purpose of enabling the owner to use and occupy his property, and not as a guise for enclosing public lands, to be an unlawful structure, although it may incidentally interfere with access to the public domain, for, as said by Mr. Justice Brown in Canfield vs. U. S. (167 U. S. 528): "So long as the individual proprietor confines his enclosure to his own land, the government has no right to com-
831 plain, since he is entitled to the complete and exclusive enjoyment of it, regardless of any detriment to his neighbor." It is only when "under the guise of enclosing his own land, he builds a fence useless for that purpose, and which can only have been intended to enclose the lands of the government" that he comes within the statute and is guilty of an unwarrantable appropriation of that which belongs to the public at large. The same doctrine is declared by the Court of Appeals of this circuit in Potts vs. U. S., 114 Fed. 52; Hanley vs. U. S. 186 Fed. 711; Billis

832 vs. U. S., 190 Fed. 530. In the Potts case it is said: "The act of a person in fencing or enclosing his own land is lawful. It is also lawful for a person to fence and enclose his own land up to a point where it connects immediately with the fence or enclosure of adjoining land owned by another. It is only when, under the guise of enclosing his own land, a person builds a fence for the purpose and with the intention of
833 enclosing the public lands of the government that the fence or enclosure becomes unlawful." And in the Hanley case the following instruction given by the trial court was approved: "A person has a right, under the law to erect fences wholly upon his own land, and to maintain them if he so desires, and if incidentally such fences may obstruct or impede the ingress or egress of stock ranging upon the public lands, or the free passage of persons upon or over such lands, no
834 one can complain, because a man has a right to do what he pleases with his own, so long as he does no wilful injury to another." It is true the cases referred to were criminal but the court was construing the Fence Law, and distinguishing a lawful from an unlawful enclosure, and I can conceive of no difference in this regard between a civil and a criminal case. A fence cannot be deemed a lawful structure in a civil proceeding, *an* an unlawful one in a criminal case, or vice versa.

835 I have not overlooked the fact that there are decisions cited by the complainant, the logical effects of which would seem to support the government's contention but, as said by Mr. Justice Moody, in Telephone Co. vs. Los Angeles (211 U. S. 274): "No case, unless it is identical in its facts, can serve as a controlling precedent for another."

The fences in question, as I understand the
836 record, were and are reasonable and proper means of protecting the defendant's land from trespass, and useful for the proper enjoyment thereof. They were built by her in good faith with no intention of appropriating or enclosing public lands or preventing lawful access thereto. In connection with fences and natural barriers on the west and north, they amount to a substantial enclosure of privately owned lands, and the crux of the question then is whether the de-
837 fendant can use reasonable, proper and appropriate means to enclose her own property without violating the federal statutes. In my judgment she can.

The complaint will be dismissed.

Dept. Two

L. A. No. 3752

The People of the State of California, Plaintiff and Respondent, vs. May K. Rindge, et al., Defendants and Appellants.

838 This action was brought to abate alleged nuisances maintained by defendants upon and across a public highway in the county of Los Angeles. The nuisances were gates and fences. The purpose of the litigation is to obtain a decree declaring that a public highway exists through the Malibu Ranch along the shore of the Pacific ocean. The Malibu Ranch is about twenty-two miles long and contains about thirteen thousand acres. Thus it is quite narrow,
839 varying in width from one mile and a half to two miles and a half. Its length is easterly and westerly. Its southern front is bounded and washed by the waters of the Pacific ocean. The inland boundary line extends along the southerly slope of a rugged, inhospitable mountain chain, cut by deep ravines and canyons. At the foot of these mountains is a stretch of country narrow and comparatively level and known as
840 mesa lands. The "shore of the Pacific," along which it is declared this highway extends is a shore characteristic of many hundreds of miles of California's littoral. Nearest to the ocean is a gradually sloping sandy beach between the lines or high and low tide. At low tide this beach is uncovered and the sand wet and compacted affords a firm passage way for footmen and vehicles. Above this is a stretch of loose, shifting sand, washed and blown above the line of ordinary high tide. This sand is dry and

841 passage over it, though possible, is difficult. The footman sinks to his ankles, the horse to his fetlock, the vehicle which he is dragging half way or more to the hubs. Beyond this loose sand is a bluff varying in height from thirty, sixty to one hundred feet. Eroded from this bluff and lying at the foot of it is the talus. This bluff marks the seaward end of the comparatively level mesa lands of which we have spoken. These mesa lands in turn are chan-
842 neled by ravines or arroyos, in winter carrying the mountain waters down the gulches to the ocean. In summer they are dry. Their banks usually are quite precipitous. The beach, of course, is likewise pierced in places by these short mountain streams, although in summer when these streams are not flowing the ocean frequently restores the sand washed away by the winter torrents. Still further the beach is
843 broken by small promontories and rocky headlands jutting out into the ocean and by rocky outcrops here and there along its line. As is well known to anyone at all conversant with the primitive life of California, these beaches afforded the customary routes of travel up and down the coast. They were smooth and level, as compared with the mesa lands which were cut by numerous gullies, difficult of descent and equally difficult of ascent. Thus travel sought the beach and followed along the line of the

hard sand uncovered by the ebbing tide. As a promontory was approached the traveler was compelled to leave the beach, climb to the mesa uplands, cross the promontory, descending to the beach on the farther side. Where the winter rains converted the arroyos into torrential streams progress was impossible. When the rising tide covered the hard beach the traveler was compelled to make his laborious way through the soft sands above, or, as was usually the practice, he interrupted his journey and remained where he was until the tide had again ebbed. Little or no construction work was ever done upon these roads if roads they could be called. The traveler, usually on horseback, when it became necessary to leave the beach, sought the least precipitous place in the bluffs, up which he rode or led his horse. Where this was impossible, the earth bank of the bluff was graded down.

Such are the general characteristics of many such ancient shoreways along the Pacific ocean; such were the general characteristics of this ancient way. In those early days the principal towns or pueblos to the north and west of that of Los Angeles were San Buenaventura in Ventura county, and Santa Barbara in the county bearing the same name. Both of these counties, like the county of Los Angeles, are coast counties. There were several routes of travel be-

847 tween Los Angeles and these northerly pueblos through the mountain passes, in addition to the shore route just described. This shore route, beginning at a settlement on the ocean near the mouth of Santa Monica Canyon, ran about five miles through another grant, Boca de Santa Monica; then entered upon the Malibu grant, ran along its coast line and a mile or two beyond it to a gulch known as Yerba Buena or Little
848 Sycamore Canyon, when it struck inland up this gulch and over the mountains and so to the town in Ventura county. Travel over the whole of this route was possible only to the footman or to the horseman. Wheeled vehicles could not be dragged over it, and indeed there were in those early days but few wheeled vehicles—carretas—clumsy carts with solid wooden wheels, drawn by oxen.

The Malibu Ranch was a Spanish grant, pat-
849 ent to which was issued to Matthew Keller in August, 1872. It was, as the foregoing description of its character at once makes plain, a stock range for the pasturing of sheep or cattle, and for this purpose it was used. Some of the surrounding lands were also Spanish or Mexican grants, but to the north of the Malibu was an unsurveyed strip of government land. In some of the upper reaches of the streams leading through the Malibu were small tracts of government land fitted for agriculture and these were

taken possession of by settlers. In the streams were trout; in the valleys quail, and in the hills deer, and the country was therefore attractive to the fisherman and hunter. All of these people entering the ranch traveled, as it was necessary for them to travel, along the shoreway above described, until, reaching the gulch or canyon which they desired to ascend, they left the beach and struck inland. At the time when Matthew Keller received his patent and for sometime thereafter the only persons actually living on the Malibu Ranch were Matthew Keller and his family, with his overseer and vaqueros looking after his stock. Their home was in the Malibu Canyon, off from the line of the beach road, which they themselves used in reaching their home. The Malibu Canyon was about two miles westerly from the easterly boundary of the ranch. Further to the westward and about three miles from the western boundary of the ranch is Lechuza Canyon. In this canyon lived the Tapias family in their adobe home. The Tapias were Spanish. They claimed ownership to a part of the Malibu Ranch, and were there living under their assertion of right. Neither they nor their visitors were apparently interferred with by Matthew Keller. From Lechuza Canyon eastward to Santa Monica it was possible to drag a carreta and it had been done from time to time by the Tapias. They left the ranch

853 in 1876. Nor did Matthew Keller's successors interfere with the settlers who used the beach road until they came to their selected canyons, either in their use of the beach road or of the primitive private trails or rough roads which they constructed to reach their locations. Very few of them made a pretense of residing on their selected lands. Nor did he interfere with the travel along his beach road which sought to traverse the ranch en route to Ventura county.
854 He did, however, interfere with and restrict, the use of the ranch and, to a certain extent, of the road, to fishermen, hunters and campers, and this because in many instances they killed his cattle, in others they made their camps near the springs which the cattle frequented for water and so drove them away, and, finally, they occasioned not infrequent and destructive fires. The entry of the settlers came after Matthew
855 Keller's death in 1881.

We have thus fairly epitomized the conditions existing when in 1875, Matthew Keller filed a petition with the board of supervisors of Los Angeles county, offering to dedicate a public highway over his lands. This offer, upon which great reliance is placed by respondents, demands, therefore, somewhat detailed consideration. In November, 1875, a petition was filed by Matthew Keller, purporting to come from the owners of the lands along the route of the proposed

856 highway, asking the supervisors "to lay out a public road along the beach fronting on said ranchos, being the only possible way said ranchos can be approached. Said projected road runs for the greater part along the beach of the Pacific ocean, but at intervals is found impassable by reason of projecting points and rocks that make said highway impassable at high water. The necessity for such a road for the
857 convenience of public travel will be quite obvious to any one authorized to view the same, as well as the nature of the improvements to be made." By way of description the petition set forth that "from the city of Santa Monica the road is a natural road along the beach for a distance of about six miles—the first obstruction to travel commences at the point of an arched rock, within half a mile of the canyon, called Topango, fronting on the Santa Monica Ranch;
858 the other obstructions to the public travel for wagons are found at intervals only between the aforesaid arched rock and the range line between 17 and 18 West, Township," etc. (this range line runs a little to the west of Malibu Canyon, where was Mr. Keller's home), a distance of about six miles in length—this road will connect the city of Santa Monica with an immense body of agricultural and horticultural lands, partly government land, for a distance of twenty miles along the beach, and to fishing

859 grounds of great value to the community. The probable cost is about $300. This proposed road, as shown by its description, was merely the old beach road which we have described. Viewers were appointed and their report followed. It declared that the road from Santa Monica for a portion of the distance westerly was in good condition. It followed the beach. Certain obstructions were then noted, the necessity in one
860 case of grading from the beach to the mesa lands, in another for blasting out obstructing rock in the lone of the beach proper. Arriving at the Malibu Ranch the viewers declare that there are two places along the beach between the easterly line of the ranch and Malibu Lake (at the mouth of Malibu Canyon) that need improvement "and then the passage along the beach from Santa Monica city will be open to travel for a distance of twenty-five
861 miles, opening thereby a scope of country fit for settlement to the amount of over four thousand acres. We estimated the whole cost of improvement at $650 in all so as to make the road passable in all seasons of the year." The report then recommended the adoption of the petition and the immediate improvement of the road as suggested. The field notes accompanying this report showed, as does the report itself, that the doing of no work was contemplated west of Malibu Lake. The field notes were carried no

862 further than Malibu Lake and concluded, after fixing the easterly line of Malibu Ranch, with "and following the beach to the lake in said Rancho." The bond accompanying the Keller petition and executed by Keller was conditioned on "the opening of a road from Santa Monica to the Rancho Topango Malibu."

There is one conspicuous infirmity in the Keller petition, which impairs its legal effect as an offer of dedication, and that is that his offer
863 contemplates a road from Santa Monica westward to (or through) his ranch. But in fact he did not own the land between the easterly line of his ranch and the town of Santa Monica and had no authority to offer a right of way as and for a public highway over those lands. Nor yet did the owners of those lands ever join in his petition. But let it be assumed that the offer at least was an expression of willingness and de-
864 sire upon the part of Matthew Keller to dedicate a public road or highway across his whole ranch, the question remains, what results from this? It appears from the report of the viewers that they contemplated only the construction of a way from Santa Monica to Malibu Canyon; that this way was to follow the beach, saving in one place where it was necessary to leave it to cross a headland. The projecting rocks in the beach sands were to be blasted out. The talus in some places were to be graded. Something of

865 this work was to be done within the boundaries of the Malibu Ranch to the west of Malibu Canyon. The major portion of it was to be done to the westward of Malibu Ranch. Keller was interested in securing a road on his ranch at least up to Malibu Canyon, where the ranch buildings were situated. But nevertheless it is fairly deducible, and the court originally found, that Keller's offer contemplated a beach highway through his ranch, his petition, it will be noted,
866 setting forth the "obstructions to the public travel for wagons" and declared that such obstructions existed only between Santa Monica and Malibu Lake. At this time, however, there were no settlers whose rights call for consideration. The entries which they later made upon the public domain did not begin until 1882-85, after Keller's death. Nor does it appear that the viewers' report was ever adopted, or that there
867 was ever any formal acceptance of the Keller offer, and the situation thus presented is and can only be that which respondent adopts, namely, that the "offer of dedication contained in the Keller petition was of a road already in existence, used and traveled throughout the entire length of the ranch." Under this view respondent contends that the petition should be regarded rather as one for the improvement of an existing road than as an offer to dedicate a new road.

868 This elimination of the Keller offer from the consideration of the case leaves it for present purposes as though that offer had not been made; that is to say, we are brought back to a contemplation of the question as to whether or not, within the meaning of our law, there was at the time of Keller's offer, or thereafter, a public highway across the Malibu Ranch.

Under the findings which the court originally
869 made and the judgment which it first gave, the existence of such a highway was declared and decreed, the court basing its conclusions, in part at least, upon the fact that this route was a recognized mode of access to the settlements in Ventura and the other northern counties. Upon motion for a new trial the court's views suffered a modification in that it granted the motion as to the existence or non-existence of such a highway from the westerly line of Malibu to Lechuza can-
870 yon, where the Tapias formerly resided. It denied the motion as to the remainder of the asserted highway, and from its order this appeal is taken.

Matthew Keller, as has been said, died in 1881. In 1874 Louis Sentous was on the ranch as foreman and overseer. In the following year he leased the ranch and he and his brother remained as tenants for seventeen years. There were no settlers upon the government land to the north and west of the ranch until after Mat-

871 thew Keller's death. This is conceded. The Tapias had departed, and aside from the occasional traveler who passed along the beach and through the rough trail over the Ventura mountains, travel on the beach road there was none, saving that which pertained to the operations of the ranch and the activities of hunters and fishermen, who were, of course, either licensees or trespassers, with rare visits from peace officers
872 in pursuit of offenders against the law. Moreover, no change was made in the road. No public improvements of any kind were constructed. Whatever may have been done to facilitate access to the ranch houses in Malibu canyon was done by the owner and his tenants. Louis Sentous testifying as to the road conditions west of Malibu Canyon as late as 1879, when he as tenant controlled the ranch, tells that he was assisting in establishing windmills which he had
873 ordered at certain places on the ranch. He says, "from Malibu Canyon and Ramirez Canyon (some six or seven miles westward from Malibu Canyon) we traveled on the beach and at Ramirez Canyon the vaqueros assisted with their lariats in pulling the wagon up the bluff. There was a trail on the mesa which we followed wherever we could but at places it was too steep to follow. A man went ahead on horseback and picked the way for us. This is the first and last trip I ever made with a wagon be-

874 yond Malibu Canyon. Before that time I had never seen a wagon traveling beyond that canyon, but I have seen them since. During those early days I did not see any travelers on the ranch. We gave strict orders not to allow any one to go through there without permission either from Mr. Keller or ourselves. I know the order was carried out. Those orders were given a few years after I rented the ranch upon receiving information that some cattle had been
875 shot by hunters."

In 1882 Guthrie and Harris, coming over the Ventura mountains, located on government land west of the Malibu. In 1884, three years after Matthew Keller's death, they drove a wagon across this beach road from Santa Monica, and thereafter went back and forth on several, and perhaps numerous, occasions. While Keller was alive his tenant Sentous asked him if he might
876 prevent strangers from going onto the ranch, and was told that he could do so. He asked because he had heard something about a county road, but "Keller told me that nothing had been done in the way of an agreement between himself and the county. I told him I was going to stop people passing through and he said that I might do so."

Neither during the period of the Sentous tenancy nor thereafter, when the title of the ranch passed by purchase to Mr. Rindge, whose widow

877 is the defendant in this action, was there any interference (saving as hereinafter noted) with the use of the beach road by the settlers upon the government domain and those who had business with them. After 1884 a number of locations were made upon the government lands. It is within the facts to say that the public had absolutely no use for this beach road, since it led to an impasse in the Ventura mountains, saving as that public was represented by these set-
878 tlers. The conduct of the owners of the Malibu was certainly not unneighborly, since they freely allowed these settlers the use of this beach road, and more than that, permitted them to construct their roads and trails from the beach road over the lands of the Malibu to their locations on the government land to the north. The first of these settlers beginning at the westerly line end of the ranch were Harris and Guthrie. To make possi-
879 ble a means of communication between their lands to the west of the ranch and the town of Santa Monica, and thus to avoid the necessity of crossing the almost impassable Ventura mountains to the north, they did some work of grading in the arroyos, barrancas and canyons on the western part of the ranch, and in 1884, for the first time in its history, they drove, as has been said, a two-horse wagon from Santa Monica to their locations. They lived upon their claims until the year 1900, when they sold to Mr.

880 Rindge, the then owner of the Malibu. Thereafter there was no location and no settler on the lands immediately to the west and to the north of the westerly end of the Malibu. In 1886 one Sweeney made his location on government land in the upper reaches of Nicholas canyon, some two or three miles east of the westerly line of the ranch. He sold to Nicholson, and in 1904 Nicholson's holdings passed by purchase to Mr.
881 Rindge. There has since been no occupancy nor need of use for this beach road by any person west of Encinal Canyon. Between Encinal Canyon and Nicholas Canyon lies Lechuza Canyon, but, as has already been said, the Tapias, there located, moved away in 1876, and there has been no settlement in Lechuza Canyon, either on or off the ranch. In 1886 Marion Decker located upon a claim in Encinal Canyon immediately to the north of the line of the ranch. He
882 came to his location over the Ventura mountains. After establishing himself he built his private road down the canyon to the beach road. Decker retains his holdings and is one of the principal witnesses for the plaintiff in its contention for a public highway. Decker testifies to the purchase by Mr. Rindge, beginning in 1895, of the settlers' claims until by 1901 "there were left only myself and Drake." Decker's road to the beach road was unquestionably a private way, constructed with the acquiescence of the

883 owners of the Malibu, and his use of the beach road to Santa Monica would no more establish its character as a public road than would the use of his road from his claim to the beach road fix the character of that as a public highway. (U. S. vs. Rindge, 208 Fed. 611.) Las Trancas Canyon lies a little over three miles east of Lechuza Canyon, at which latter canyon, under the order granting a new trial, the public highway in the present state of the record now ends. Claims
884 were taken up in this canyon by two men, who, in turn, sold to Mr. Rindge. The testimony of Mr. Decker is that there are claims on government land in Escondido Canyon, which lies approximately half way between Lechuza Canyon and Malibu Canyon, owned by Schumacher, Mellus, Gillis and Diss, and that they have done some work constructing a private road from their claims to the beach road. No one of these
885 presented himself as a witness in the case. It appears, then, that even before the commencement of this action Decker and Drake were the only two persons who had any use for the beach road, and the contention of appellant is that the use which they have made and are making of it is precisely the use which they have made and are making of the private road from their claims to the beach road—a permissive use for a private way under the sanction of the owners of the ranch.

886 Appellants further rely upon the failure of the county of Los Angeles ever to declare this road a public highway, or ever to exercise any dominion or control over it, or ever to expend any money in its maintenance, care or betterment. It was not declared a public highway by the Court of Sessions under the statutes of 1850 (Stats. 1849-50, page 200). It did not become a public highway under the provisions of the Act of 1855 (Stats. 1855, page 192), which declares public
887 highways to be those so designated by the Court of Sessions or board of supervisors, or which may be hereafter so declared by the board of supervisors. Nor yet did it become a public highway by virtue of the provisions of Sections 2618 and 2619 of the Political Code as they read when that code took effect in January, 1873. Nor, finally, did it become a highway by virtue of the special road laws applicable to the county
888 of Los Angeles, found in the statutes of 1877-78 (Stats. 1877-78, pages 6 to 17), both of which acts contemplate that the supervisors, before any such road shall be or be decreed to be a public highway shall "cause said road to be properly located and declared as a public or county road," and in this connection reference also is made to Section 2621 of the Political Code, which declares that "no route of travel used by one or more persons over another's land shall hereafter become a public road or byway by use, or until

889 so declared by the board of supervisors, or by dedication by the owner of the land affected."

The testimony of the settlers, whose occupancy of the government lands began about 1884, is to the general effect that they were not disturbed by the owners of the Malibu Ranch in their use of the beach road; that in many places it was, of course, no road at all. The settlers themselves, for their own convenience, made improvements in the natural conditions
890 where it was necessary to leave the beach. The mesas were not cultivated and one could drive over them at pleasure. "In the early years there was nothing but a bridle trail. We drove where we pleased. There was no injury done. We first found a road or way marked by wagon tracks west of Encinal Canyon about 1888 or 1889. During the early years we traveled practically all the way from Malibu to Ramirez on
891 the beach. Whatever patches of road there are which are not in hard sand have been built since that time. There were miles of way along the Malibu Ranch where, during the time we lived there, the only convenient way to travel was where the sand was made hard by the water." Such, and much more to like effect, is the concurrent evidence of plaintiff and defendants. It is to be noted that all such parts of the road as ran along the beach between high and low tide—and this was much the greater part of it—was

892 not on the ranch at all. It was on tide lands owned by the state. These natural conditions, with the slight improvement which the settlers made in them for their own convenience, continued until after Mr. Rindge acquired title to the ranch and in 1894 erected gates—one at the easterly entrance to the ranch, the other at Malibu Canyon. From the first Mr. Rindge insisted that there was no public way upon the
893 ranch; that the road was only a private road, permission to use which had been accorded to the settlers. He gave to them keys to the locked gates. They, or some of them, insisted that the road was a public highway, and being advised by their attorneys that the acceptance and use of keys might militate against this position, they caused Mr. Rindge to be cited before the board of supervisors for obstructing a public highway, the citation being that Mr. Rindge show cause
894 "why a certain gate described in said summons should not be removed from an alleged public highway." Mr. Rindge at this time had spent large sums of money in building a road from the eastern boundary of his ranch to Malibu Canyon. He made answer that the gate which he was maintaining was on this privately constructed and privately owned road. He conceded the existence of the beach road as a public highway from the eastern boundary of the ranch "to a point on the beach opposite the Mal-

ibu lagoon." He declared that none of the neighbors "had ever been hindered or their friends from passing through, and many privileges had been given them." The result of the hearing under this citation was most inconclusive and unsatisfactory. No official action was taken by the supervisors other than an indefinite continuance. It is asserted by plaintiff that this indefinite continuance was the result of a compromise agreement by which, in effect, Mr. Rindge admitted the road through the ranch to be a public highway. On behalf of the defendants it was stoutly insisted that his admission went only to the road from the easterly line to Malibu Canyon, and that under this admission he ceased to lock the gate at the entrance of the ranch, but maintained a locked gate at Malibu Canyon. He persisted in this for some time, and the settlers upon the other hand, broke the lock and frequently destroyed the gates. He posted signs and warnings at and near the gates. He published similar warnings in the newspapers. The form of such signs and notice was, "No passing through the Malibu Ranch is allowed. No camping thereon under penalty of law. Shooting and hunting forbidden." Mr. Rindge, and Mrs. Rindge after him, continued their interruptions and protests with pertinacity until finally this action was brought.

898 It is manifest that if a public highway exists at all, it exists by prescriptive user and not by official acceptance of an offer of dedication, nor by any official recognition of the existence of the highway. Indeed it is quite plain that any county would be extremely slow to take into its charge and burden itself with the care of such a strip of ocean beach, which from the very nature of the country would have slight use and less value. In opening the waterfront of their
899 ranch to the travel on foot and horsemen the owners were but following the custom of the country. When that travel of necessity sought the mesa uplands it would have been unneighborly to the last degree to have checked it or turned it back, and the owner's failure to do so .o more established intent to dedicate a public highway than would their reception and entertainment of such a travel over night have es-
900 tablished their intent that he should take up a permanent residence with them. Dedication under such conditions is not to be lightly inferred. (Harding vs. Jasper, 14 Cal. 642; Cerf vs. Pfleging, 94 Cal. 131; Niles vs. City of Los Angeles, 125 Cal. 572.) It is quite understandable that the settlers upon the one hand, because their passage was not interfered with, may have come to the conclusion that they were traveling as of absolute right over a public way, but their belief is not at all inconsistent with the position

901 and proof of the defendants that throughout the history of this primitive trail it was but a private way, which developed into a more or less efficient road, in the construction of which the public took no part, and the burden of which construction was largely borne by the owners of the ranch—the settlers, for their own manifest advantage, contributing some of their labor.

It follows herefrom that the findings of the court decreeing the existence of a public high-
902 way across the Malibu Ranch cannot be sustained and that the order refusing to grant defendants' motion for a new trial must be reversed. In this connection it is to be noted that the Rindges had constructed upon the uplands and away from the tidal beach a new road to Malibu Canyon. Apparently it is conceded that the beach road, as far as Malibu Canyon, is or may be regarded as a public highway. But this
903 admission or concession will not justify in and of itself a finding or declaration that the newly constructed private road is a public substitute for the original beach road.

The order denying a new trial is reversed.

HENSHAW, J.

We concur:

MELVIN, J.

LORIGAN, J.

I, B. Grant Taylor, clerk of the Supreme Court of the state of California, do hereby certify that the preceding and annexed is a true and correct copy of an opinion filed this day, as shown by the records of my office.

Witness my hand and the seal of the court, this 7th day of April, A. D., 1917.

B. GRANT TAYLOR, *Clerk.*

By GEO. H. S. DRYDEN, *Deputy Clerk.*

(Seal) San Francisco Office.

By Mr. Anderson:

It was in pursuance of that document which you have just read that that first meeting took place—I don't remember which one it was that the Triumfo road was discussed; I think it was the first one.

Mr. Anderson: Now, Mr. Burnell, was the date of the meeting in 1917—all I want to do is to put in the book and page; will you stipulate that the meeting referred to occurred on October 8th, 1917? It is page 41, book 19, I don't care for the entry unless you do, and the other meeting—

Mr. Burnell: The last one is page 219.

Mr. Anderson: The second meeting was held on May 27th, 1918, found at page 219 of the same volume. I think that is all.

Mr. Burnell: I don't know whether this is a pertinent time or not, but we would like to read

907 some of those records in, and I desire to now offer in evidence a portion of the record of the board of trustees on October 15, 1917, which is found in the Road Book No. 19, page 38, and the entry is short and I will just read it.

Mr. Anderson: Waiving any objection to it as to its not being redirect examination, we renew the objection that it is incompetent, irrelevant and immaterial, and has no bearing on the main case, as it occurred years after the resolu-
908 tion and it shows on its face that it does not pertain to either of the other matters.

Mr. Burnell: One of the theories under which it is offered is that counsel has just offered the minutes on page 41, as referred to, and that is a matter directly leading up to that meeting. It is the minute of the receipt of that communication.

Mr. Anderson: I simply offered that page to
909 identify the date, it having been brought out in direct examination that such a meeting was held. I don't offer the minutes.

Mr. Burnell: I am reading from book 19 of the minutes of the board of supervisors of Los Angeles county, minutes of a meeting on Monday, October 15th, 1917. "Office of the Board of Supervisors, of the County of Los Angeles, State of California, Monday, October 15th, 1917. The board met in regular session. Present: Supervisors F. E. Woodley, R. F. McClel-

910 lan, J. Dodge, and H. J. Leland, clerk, by A. M. McPherrin, deputy clerk. Absent: Supervisors J. J. Hamilton, chairman. In re Malibu Road. Order fixing date for hearing. A communication signed by May K. Rindge, and Rindge Company, by M. K. Rindge, Pres., dated October 10, 1917, requesting that no definite or final steps be taken by the board of supervisors to condemn right of way for a road through the Malibu Ranch until all parties interested in the
911 matter be given an opportunity to be heard, is presented; and on motion of Supervisor Dodge, duly seconded and carried, it is ordered that hearing in said matter be set for Thursday, October 18th, 1917, at ten o'clock a. m."

Mr. Burnell: I presume that it may be stipulated that I am omitting all of the minutes excepting those relating to the road. I now desire to offer in evidence the minutes of October the
912 18th, 1917, page 41, being a portion of the minutes of a meeting held Thursday, October 18th, 1917.

Mr. Anderson: Our objection goes to all of this without repeating it?

The Court: Yes. Same ruling.

(Exception No. 6.)

Mr. Burnell: "Office of the Board of Supervisors of the County of Los Angeles, State of California, Thursday, October 18th, 1917. The board met pursuant to adjournment. Present:

913 Supervisors J. J. Hamilton, chairman, presiding, F. E. Woodley, R. F. McClellan and J. F. Dodge, and H. J. Leland, clerk, by A. M. McPherrin, deputy clerk. In re Malibu Road, proposed condemnation of land. This being the time heretofore set for a hearing in the matter of proposed condemnation of land for a right-of-way for a road through Malibu Ranch, the matter is called up. The board is addressed by Mrs. May K. Rindge, and by W. H. Anderson,
914 her attorney, and also by H. H. Manley and other interested property owners. Whereupon, on motion of Supervisor Woodley, duly seconded and carried, it is ordered that the matter be taken under advisement."

Mr. Burnell: We are not offering this now, but the next thing in the minutes relating to the Malibu Road question is on page 77, road book 19, which is a resolution ordering the condemna-
915 tion of the land necessary for the highway that is sought to be acquired by the second suit, the Alisos canyon.

Mr. Newby: You are not contending that there was any petition for the particular road between those times, appearing there?

Mr. Burnell: Oh no. The next entry is page 210, road book 19, and it is an extract from the minutes of a meeting of the board of supervisors held on the 13th day of May, 1918, beginning as follows: "In re Malibu Road, petition for

916 abandonment of proceeding for opening and improvement. A petition signed by May K. Rindge and Rindge Company by May K. Rindge, asking that all proceedings for the construction of a highway through Malibu Ranch be abandoned, that condemnation suits now pending in the Superior Court for condemnation of land for right-of-way for said road, be dismissed, and requesting a hearing on said pe-
917 tition is presented and on motion of Supervisor McClellan duly seconded and carried, it is ordered that said request be granted and that hearing on said petition be held in the office of this board on May 27th, 1918, at 2 o'clock p. m." The next entry I desire to offer is found on page 219 of the same book, being a portion of the minutes of a meeting of the board of supervisors held on the 27th of May, 1918, reading as follows: "Office of the Board of Supervisors, of
918 the County of Los Angeles, State of California, Monday, May 27th, 1918. The board met pursuant to adjournment. Present: Supervisors John J. Hamilton, chairman, presiding, E. J. Delorey, R. F. McClellan and Jonathan S. Dodge and H. J. Lelande, clerk, by A. M. McPherrin deputy clerk. Supervisor F. E. Woodley being absent on vacation. In re Malibu Road: Hearing on petition for dismissal of condemnation suit. This being the time set for hearing on the petition of May K. Rindge and Rindge Company

919 for abandonment of proceedings for the opening and construction of a highway through Malibu Ranch, and for the dismissal of condemnation suit now pending in the Superior Court in said matter, the matter is called up and the board was addressed by Nathan Newby, Esquire, and others, in behalf of petitioners and by various persons in opposition to said petition. Whereupon, on motion of Supervisor McClellan, duly
920 seconded and carried by the following votes to-wit: ayes, Supervisors Delorey, McClellan, Dodge & Hamilton; noes, none; it is ordered that said petition be denied and that the county council be instructed to proceed with action for condemnation of rights of way for said road."

Q. Now, I will ask you if, according to your best belief, that the statement contained in this petition on July 7th, 1917, signed by you and sent to the board of supervisors, if that was cor-
921 rect? A. So far as I know. I think Mr. Anderson or Mr. Newby, the attorneys prepared this petition.

Mr. Anderson: I will stipulate right now that I prepared it. Mr. Newby was not connected with the matter at that time.

Mr. Burnell: At all events, of course you looked it over and you were familiar with the statements made before you signed it? A. Yes.

Q. On the page before the last you stated the fact as follows: "That while it would doubtless

922 be more convenient for them (meaning the settlers) to make use of the roads through the ranch in order to get to Santa Monica & Ocean Park, for the purchase of supplies, they, nevertheless can, with added difficulty, it is true, reach supply centers to the north and west and are not, therefore, under any absolute necessity of using the roads through our ranch." That statement is true, is it not? A. Of course, we have the roads already made. They have made no roads.

923 Q. Was that true, or untrue? A. I presume it was.

Q. You believed so at the time—at the time you made it? A. There are one or two of them that could be.

Q. So that there were at that time settlers who could not reach Santa Monica and Ocean Park to buy their supplies without going over your ranch? A. No, none whatever. They

924 have been shut out from the ranch.

Q. Yes, but I say that they could not get to those two cities without passing through your ranch? A. Oh yes, indeed, they came in that way. They came in by the Crags Country Club and the Triunfo route.

Q. Did they come in from Santa Monica that way? A. I think they came from Los Angeles.

Q. But to get to their homes from Ocean Park or Santa Monica without going through your ranch, when it was locked up, they would

925 have to go a round-about road? A. No; they could go through Topanga. It is just as direct as through our place.

Q. That is, from Santa Monica to the homes of these settlers you think it would be just as direct by Topanga canyon? A. Yes, because their land is between our land and the state highway.

Q. And were there roads from the Topanga road to the land of these settlers? A. Yes,
926 there were roads and trails the same as down to the ranch, that is, roads part of the way and trails the rest of the way; these trails were not trails over which automobiles could usually be driven or even a wagon. They were just merely trails that the cattle had run out in early days, and then the people had settled this government land.

Q. Then it is a fact, as stated in this pe-
927 tition, is it not, that for many years the Rindge Company and yourself, as owner of the Malibu Ranch, have been, to the best of your ability, fighting the efforts of these settlers to pass through your land? A. Why, at first we did not oppose them. At first we did not oppose them. We let them go through, and they would come to our place at night. We would ask them to stay over night. We would give them their food. We would ask them to camp on the ranch. We would take care of the horses. And

928 then we commenced to be relieved of so much stuff. That was not this first crowd. The first crowd, everything was all right. That was in Mr. Rindge's lifetime and in my lifetime too. They stayed all nights our house. I prepared their rooms and Mr. Rindge looked after the feeding. This pleasant feeling was before Mr. Rindge's death, and after his death until they commenced to break down the gates and go in
929 there and try to get a spectacular proceeding. They usually did it surreptitiously, of course; we know pretty well it was the settlers; somebody saw them.

Q. For some years you have been fighting, to the best of your ability, to prevent the settlers and others passing through the Malibu Ranch? A. Not until the suit was brought.

Q. What suit was that—the government suit? A. It was right after my husband died
930 some time.

Q. Is it not a fact that both in and out of the court that you—when I say you, I mean the ranch or the Rindge Company— A. Yes; my children too.

Q.—have been opposed to the [illegible]ting of any public roads through the Malibu Ranch for many years. A. We don't want a road through the Malibu Ranch, because it will break up the ranch.

Q. I don't care for your reasons; but the

931 fact is that the owners of that ranch have been persistently opposing the public having a road through the ranch. A. Because there is no need of it. They can go on the state highway.

Q. That is another question, but isn't that a fact that you have been? A. Yes; we don't want a road through the ranch.

Redirect-Examination

By Mr. Anderson:

932 Q. Mrs. Rindge, why have you been opposing and not wishing a road through the ranch these years? A. On account of fires. One reason is on account of fires and on account of cattle being stampeded, and the shooting of the stock, and we had our pasture all burned off twice. We have had to take the cattle out, and it has cost us as much as the whole band of cattle were worth to get people from other places, and we have had our houses burned

933 down and our ranch machinery burned up, and we think that is enough. Of course, we have many reasons why. There is a lot of smuggling going across the ranch; we want to stop that smuggling. If we see the people down on the ranch, we can keep them from going beyond. There isn't half the smuggling going on now across the ranch as there was when the roads were open. Of course the people just about lived on us; their horses lived on us. Take eight or ten people a day, having them eating your hay

934 and your beans, and it becomes very annoying in the end. You cannot lay down a double-tree or a single-tree or a hammer or neck yoke or anything else that is big enough to be carried off the ranch, that it is not gone when you go after it. It becomes annoying in time. These are some of the reasons. I presume I have a hundred more. They have chopped down our trees. They take our bridges and our roads. They have taken things from us. They have taken
935 our cattle. They go in and steal our cattle and steal our horses and mules and sheep and pigs. We have lost a tremendous amount of livestock through people being on the ranch when we could not put them off. The reasons are endless that any rancher would not like the people going through the ranch promiscuously; but fires is one of the greatest dangers because that takes everything.

936 Q. When you speak of or make use of the term "break up the ranch," what do you mean by that? A. It was cutting it up into so many pieces. We would not be able to farm it economically, and in these days a ranch has to be run economically or else you can't run it at all.

Q. Anything with reference to the fences? A. Yes; keeping up the fences and keeping our livestock from going out on the roads would be a tremendous expense, keeping the people from trespassing. We have had to have four to eight

937 line riders during the fire season and the hunting season. People will go in there and hunt and picnic; it would be impossible to keep them off if there were public roads on the ranch. Wherever they go, there is an object lesson between Santa Monica and the ranch, what people would do, and what they make their brags they are going to do.

938 Q. Have you had any experience that attempts to affect any of these reasons so far as the public use of the road is concerned? A. Yes, every one of these. The road was opened from 1907 until about a year and a half ago, and during that period it was used by the public. We have not had the experience I speak of since the road was closed. Prior to that time we did. There was a continual and continuous annoyance one way or the other.

Recross-Examination

939 By Mr. Burnell:

Q. Mrs. Rindge, hasn't there been, as far as you know, more or less ill feeling between yourself and some of these so-called settlers? A. No; I have no ill feeling.

Q. No feeling that would have made some of these people do things that in its absence they would not have done? A. No, I don't think so.

Q. Mrs. Rindge, don't you think that some of these reasons would be obviated if upon a road being built through the ranch it should be

940 properly fenced upon either side so that the public could be kept off your land,—a barbed-wire fence, and signs on it? A. Do you think a barbed-wire fence would keep that crowd out?

Q. Well, I don't know. A. No, sir; there is not a fence in Christendom would keep that crowd out if they wanted to go in.

Q. Do you think that the class of people that travel over that road differs in any respect from
941 the class of people that travel over highways in general? A. Yes; because lots of people will go in and take advantage where lots of other people will not take advantage. You can see that on the way up to the Malibu, the crowd that is along there; and that is detrimental to anybody's health. The first rain there is a terrible odor all the way up and down there from these people, from between Santa Monica and the ranch. I am referring to people that camp along
942 the beach, and you can't keep them out of it. It would be an impossibility. You would have to keep a hundred line riders to keep the crowd out that want to go on the ranch. That is not more or less a matter of personal opinion; that is experience. The road was just lined before we closed them out. They would go as far as they could with machines. The people are so foolish about fires. Right in front of the Malibu we had a barley field coming to the sand. Instead of them going into the sand to build a fire they

943 would go into the edge of the barley. They would go and build a fire in the edge of the barley and it keep our men busy all day Sunday putting out fires. They could only get the other side of the Malibu canyon.

Q. Do you think you have experienced any greater difficulties than the owners of other ranch property whose properties lie along the sea coast?

944 Mr. Anderson: Object to that as argumentative; no foundation laid.

The Court: Overruled.

Exception No. 7.

A. Why, I think the supervisors and the people that own property back there have urged these people—I know Jack Henry at the gate, he would say, "Go on in, they can't put you off." We are supposed to own the land. "Go on in. They can't put you off. Do this and do that." I

945 think it was a put up job to get a road through there on the part of the supervisors and the people back in there. We have missed tools after certain people have gone through; we have missed them all along the line. I never noticed who in particular—just in general. When the people would pass through things would be gone. We have quite a number of people living on the ranch just in the past year, to whom we lease part of it. We have never leased it

946 before the past year. Last year was the first year. We leased just the bean land.

Redirect Examination

By Mr. Anderson:

Q. Mrs. Rindge, Mr. Burnell has asked you if you didn't think the fences, properly constructed fences there would give some benefit in the matter of this travel. Now, I will ask you isn't it your opinion that if a road is built through that the fences will be necessary in
947 order to restrain the cattle and other purposes? A. Yes; for the cattle, but not for the people.

A. M. MCPHERRON,

a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

I am deputy county clerk and active clerk of
948 the board of supervisors and have been for a great many years, and was such on August 21st, 1916, and have been continuously such ever since. As such I have charge of the record books of the county with reference to the supervisorial proceedings and road matters. I am familiar with the facts of the resolution entitled "In re Malibu Road, road district No. 4, resolution authorizing condemnation proceedings," which was passed on August 26, 1916, and is found in volume 17 at page 344

949 of the road book. Prior to the passage of that resolution, no notices to my knowledge, were sent out to May K. Rindge, or any officer of the Rindge Co., or any officer of the Hueneme, Malibu and Southern Railway Company, or any officer of the Hueneme, Malibu and Port Los Angeles Railway Company, concerning any hearing on the subject of that resolution. I would have charge of that unless it was done by the Legal Department. As the officer of
950 the board of supervisors, I sent no notice. There was nothing in the minutes instructing you to send any such notice, and I received no such instructions from the board.

Q. Very well. Now I will ask you concerning this particular resolution I have just been talking about, whether or not there was any hearing before the board of supervisors sitting as such in open session, before the passage
951 of that resolution, or the subject matter of it. A. I cannot answer that question. It is some years ago. Various resolutions pertaining to the same matter have been adopted.

Mr. Anderson: Can't we agree about that without putting him to the trouble of searching the records?

Mr. Burnell: I haven't sufficient personal knowledge.

Mr. Anderson: Very well, I will ask Mr. McPherrin to do this, to see if the records show

952 any such meeting and then either state the resolution to Mr. Burnell, and I will accept it, or come up here.

Mr. Burnell: Yes.

Mr. Anderson: Now, so far as the minutes of that date are concerned, does it show or is there any showing that there was a hearing on the resolution at that time or that anyone was there present, for or against it? A. Nothing
953 in the minutes to indicate this hearing.

Q. Or any hearing on that date, other than the mere passage of the resolution? A. No, sir, that is all.

Q. Calling your attention to Book 19, page 17 as to the resolution in re proposed road in Malibu Ranch, the resolution authorizing the condemnation of land for a right of way adopted December 3rd, 1917, I will ask you whether or not you were instructed to send out
954 notices concerning the adoption of that particular resolution before it was adopted. A. No sir, I was not. My answer to that is the same as to the other you asked me about.

Cross-Examination

By Mr. Burnell:

At any of these meetings at which the three different resolutions were taken up, I do not remember any discussion by the members of the board on the general subject of the resolution, though I would not say there was not.

955 I do not remember whether there was any discussion. I don't remember whether there was any instruction given to the county counsel to prepare the resolutions, any instruction by the board outside of the resolution itself. I do not know where the board of supervisors acquired the long description that is contained in the first resolution passed in 1916.

2 o'clock P. M.

956 (Jury present and in the box.)

A. M. MCPHERRON,

Cross-Examination (Resumed)

By Mr. Burnell:

I have acted as clerk of the board of supervisors about 14 years and during that time I have been present at almost every meeting. Not over ten meetings during that time that I have not been present at.

957 Q. Calling your attention to the time prior to the passage of the resolution ordering the condemnation of the road through the Malibu Ranch, some time, I believe, in August, 1916—

Mr. Anderson: August 26th.

Mr. Burnell: August 26th, 1916, and particularly to a meeting held in the year 1916 before that time, do you recall whether or not there was any discussion in the board and between the members of the board relative to the acquisition and condemnation of land for the road through the Malibu Ranch?

958 Mr. Anderson: I object to that as immaterial, if the court please.

The Court: Overruled.

Exception No. 8.

A. There have been discussions of that, I should think, for eight or ten years at different times. It came up occasionally and was discussed by the members of the board, and for the last five years especially, the discussion has been quite frequent.

959 Q. By Mr. Burnell: Do you recollect whether or not there were occasions prior to August 26th, 1916, at which persons other than the members of the board addressed the board of supervisors relative to the necessity, feasibility and practicability of a road being put through the Malibu Ranch and by that I mean a public road?

Mr. Anderson: Objected to as incompetent,

960 irrelevant and immaterial and too general. It is perfectly apparent there were various road matters connected with the Malibu Ranch such as the route to be taken and the hearing before the court and it seems to me that if there is any attempt to be made to show the omission from the minutes it must be with reference to this particular resolution and the road covered by this resolution.

The Court: Overruled.

Exception No. 9.

961 A. I know that there were other meetings but I cannot refer to any specific date or occasion when the board was addressed by outside parties. I know that to be the fact that the board was addressed. I know that the board has been addressed by outside parties, previous to this date, on the question of the Malibu Road. I cannot state the exact date.

Redirect-Examination

By Mr. Anderson:

962 I know that some of the discussion that was had before the board of supervisors was with reference to the lawsuit, one in the Federal Court and the other before Judge Oster.

Q. Don't you know—have you no recollection of any discussion by anybody as to this particular road covered by this resolution, August 26th, 1916? A. Outside of the members of the board?

963 Q. Yes. A. I can not state any particular instance.

Q. Your records do not show any public meeting concerning that particular road prior to the adoption of that resolution? A. I haven't found any. May be I misunderstood the question. I thought it was with special reference as to whether or not the county counsel had been instructed to prepare a resolution.

Q. Not at all. Anywhere, in the book—the

964 inquiry was is there any place where the records show any meeting or memoranda of any kind prior to the resolution of August the 26th? A. I think I can answer that. On January 31st, 1916, a resolution was adopted authorizing the county counsel to take such steps as might be necessary to institute proceedings in the Superior Court for the condemnation of a strip of land forty feet wide through the Mal-
965 ibu Ranch.

Q. Can you give us the book and page? A. Yes, it is Book 17, page 16.

Q. Does that show there was any hearing at that time on the subject by anyone outside of the board of supervisors and the county counsel's office? A. I don't think so. I am not sure about that, but I don't think so.

Q. Are those the resolutions you have reference to, page 16 and 17, book 17? A. Yes,
966 those are the resolutions.

Mr. Anderson: We would like to offer these in evidence, if the court please. First on page 16, book 17, under date of January 31st, 1916—

Mr. Burnell: That is the road book, isn't it?

Mr. Anderson: Yes. "In re Malibu Road. Petition of Venice Chamber of Commerce asking that the board of supervisors adopt necessary measures for opening the road extending through the Malibu Ranch commonly known as the Malibu Road is presented and on motion of

967 Supervisor Hinshaw, duly seconded and carried, said communication is ordered placed on file." Another resolution, "In re Malibu Road. Resolution authorizing condemnation proceeding. A petition signed by C. B. Kersley and others, asking for the opening of a public road through the Malibu Ranch is presented, and on motion of Supervisor Hinshaw, duly seconded and carried by the following vote, to-wit: Aye,
968 Supervisors Hamilton, Norton, Woodley, Hinshaw and Pridham; noes, none, it is ordered that the following resolution be adopted: Whereas, in the case of the People of the State of California, Plaintiff, vs. May K. Rindge, Administratrix, et al., Defendants, numbered B-59,557, of the Superior Court actions, County of Los Angeles, State of California, the Superior Court of the county of Los Angeles has held that certain road, known as the Malibu
969 Road and extending from the southerly line of the Malibu Ranch to that certain canyon located in the northerly part of the Malibu Ranch, known as La Chusa Canyon, to be a public road of the width of 20 feet; and

Whereas, said case has been appealed to the Supreme Court of the state of California and the matter is now before said Supreme Court for its decision; and

Whereas, the status of that certain stretch of road known as the Malibu Road and extending

970 from La Chusa Canyon on the south to the Ventura county line on the north is in dispute; and

Whereas, as action for injunction has recently been begun by the Rindge Company, a corporation, the owners of said Malibu Ranch, in the Superior Court of this county against John Fitzpatrick and others, which said action is numbered B-32480, for the purpose of enjoining travel over and across the Malibu Ranch
971 over that certain road through the Malibu Ranch alleged in said action to be the private road of the Rindge Company; and

Whereas, it is apparent to this board after investigation of the premises that further litigation may be avoided by the condemnation of certain parcels of land through said Malibu Ranch for highway purposes; and

Whereas, it is apparent to this board that
972 many stretches of that certain road, decided in said action of the People of the State of California, vs. May K. Rindge, Administratrix, et al., to be a county road, have become and are impassable and impossible of construction for the following reasons, namely: that said stretches are along the sands of the beach where they are constantly in danger of being washed by the tides; that such stretches are subject to landslides from adjacent banks; that such stretches, no matter how well constructed, would

need constant repair because of the drifting of the sands of the sea; and

Where as, it has come to the attention of the board that the property owners living adjacent to said Malibu Ranch (by the action of the Rindge Company, a corporation, the owners of the Malibu Ranch) are being deprived of access to their homes;

Now, therefore, be it resolved that the county counsel of the county of Los Angeles be and he hereby is authorized and instructed to take such steps as may be necessary to institute proceedings in the Superior Court of the state of California, in and for the county of Los Angeles, for the condemnation of those certain parcels of land 40 feet in width throughout the Malibu Ranch and along the coast of this county, beginning at the southerly line of said Malibu Ranch and extending northerly to the Ventura county line, and that he be and he hereby is instructed to prepare and present to this board a resolution authorizing and directing him to institute proceedings for the condemnation of parcels of land that will permit of a highway through said Malibu Ranch, as hereinabove indicated, all of which shall be so situated as to be above the line of the highest tide of the sea."

Q. Now, I will ask you concerning that resolution, were you instructed to give any notice

976 to anybody concerning the matter, in the matter of any hearing, before it was adopted? A. No, I think not, Mr. Anderson. I don't remember whether or not Mrs. Rindge or anyone representing the Rindge Company appeared before the board in connection with that resolution, or anything in connection with it at that time. I don't remember seeing them there at all events. I don't remember whether they
977 were there or were not. In fact, I don't remember any circumstances connected with the meeting and resolution. There is nothing in my records that shows any notice having been given for that particular meeting.

Q. And you do know of your own knowledge that you were not requested by the board to send out any such notices? A. Well, I can't swear positively to that. I don't think I was.

Q. Can you swear that you ever sent any
978 concerning that particular matter? A. I don't think I ever sent any.

Q. What is the next matter? A. Resolution adopted by the board, or possibly not a resolution, on July 30th, 1917. That is in book 18, page 365. That resolution or order—

Q. Just a moment. This, if the court please, is under the date of July 30th, 1917.

"Office of the Board of Supervisors of the County of Los Angeles, State of California. Monday, July 30th, 1917. The board met in

979 regular session. Present, Supervisors J. J. Hamilton, chairman, presiding, R. H. Norton, F. E. Woodley, R. F. McClellan and J. S. Dodge; and H. J. Lelande, clerk, by A. M. McPherron, deputy clerk."

"In re Malibu Road: Order relating to obstructions."

"The attention of this board having been called to the obstruction of Malibu Road near the boundaries of the Rindge estate property,
980 on motion of Supervisor McClellan, duly seconded and carried, it is ordered that the county counsel be requested to make necessary investigation and report whether title to said road is now vested in the county of Los Angeles, and if not so vested, to adopt necessary measures to secure title to said road."

Q. Have you any further resolutions? A. I have a memorandum of a resolution adopted on
981 May 27th, 1918.

Q. I will ask you this: Have you there any memorandum of a resolution adopted—This is July, 1917. You have one on May 27th? A. May 27th, 1918.

Q. What volume? A. I have not a reference to that. It must be in book 19.

Q. This was May 27th, 1918. A. May 27th.

Mr. Anderson: This was passed, of course, if the court please, after the Los Alisos resolution, but before the resolution with reference

982 to the beach road, and I think it is due, Your Honor, that all of those matters, that are contained in this book should go in the record. I have not read this resolution, but if it relates to the— Well, this is in I think. This resolution has already been offered. This is the resolution of May 27th, 1918, in re Malibu Road hearing on petition for dismissal of condemnation suits. That is already in evidence.

Q. Have you any others?

983 The Court: They have denied the petitions and it instructs the county counsel to proceed.

Mr. Anderson: Yes, instructs the county counsel to proceed with action to acquire right-of-way for said road.

The witness: Aside from this, I find that numerous minute entries occur in reference to the Malibu Road. I was looking for special instructions to the county counsel to proceed.

984 Q. Now, Mr. McPherron, we hate to trouble you, but will you again take this book and examine it with reference to any action that was taken by the board, either prior or subsequent to August 26th, that has, in your judgment, a bearing upon either of these three particular roads now involved in these condemnation suits. A. I have a memorandum here showing the pages of the entries in books 16, 17, 18 & 19, I think.

985 Q. All of the references? A. All referring to the Malibu Road.

Mr. Anderson: Then, if the court will pardon us while we examine them—

Mr. Burnell: Probably it might be well to take an adjournment of ten minutes while Mr. Newby and I go over them.

Mr. Anderson: Mr. McPherrin, I want to ask you if these minutes were personally prepared by you yourself? Are they written up
986 personally by you? A. Well, I dictate them and instruct the stenographer.

Q. Calling your attention particularly to page 344, the minutes of August 26th, 1916, and the resolution which reads, "In re Malibu Road, road district No. 4, resolution authorizing condemnation proceedings," I will ask you if that particular resolution was dictated by you and approved by you after it was written, A. Well, I don't remember the particular case, but in a
987 case of that kind I would simply dictate to a stenographer this first paragraph here, giving the vote of the supervisors, and then hand him the resolution or hand the resolution to him and state it was adopted by a full vote.

Q. And that to the best of your knowledge was what was done in this instance? A. Yes; one of those two.

Q. All right. Let me have that. A. Yes. sir.

988 Mr. Anderson: I wish to offer a resolution, book 17, page 22 as follows: "Office of the Board of Supervisors, of the County of Los Angeles, State of California. Wednesday, February 2nd, 1916. The board met pursuant to adjournment. Present: Supervisors R. W. Pridham, chairman, presiding, J. J. Hamilton, R. H. Norton and W. E. Hinshaw; and H. J. Lelande, clerk, by A. M. McPherron, deputy clerk. Supervisor F. E. Woodley being absent
989 on account of outside county business.

In re Malibu Road: Resolution declaring certain portions of road a public highway. On motion of Supervisor Hinshaw, duly seconded and carried, it is ordered that the following be and the same is hereby adopted:

"Whereas, it has come to the attention of the board of supervisors of Los Angeles county that a right of way for road purposes has heretofore
990 been obtained by the public by prescription over and along that certain piece or parcel of land hereinafter described, and that certain piece or parcel of land hereinafter described has been used as a route of travel by the public for highway purposes for more than 20 years last past; and,

Whereas, it has come to the attention of this board that said piece or parcel of land is now being used by the public for highway purposes; and,

991 Whereas, it has come to the attention of this board that the Superior Court of Los Angeles county, state of California, has heretofore decreed and adjudged that certain piece or parcel of land hereinafter described to be a public highway, in that certain Superior Court action entitled, 'The People of the State of California, Plaintiff, v. May K. Rindge, Administratrix, etc., et al., Defendants,' numbered 59,557, Superior Court actions;

992 Now, therefore, it is hereby ordered and declared by this said board that the public have a right for highway purposes over said parcel of land hereinafter described, and that said parcel of land be, and the same hereby is declared to be a public highway and dedicated to the use of the public for highway purposes.

The parcel of land hereinabove referred to is described as follows:"

993 Then follows an elaborate metes and bounds description covering a number of pages, down to page 30, and with a closing sentence:

"Reference is hereby made to county surveyor's map No. 8039 on file in the office of the surveyor of Los Angeles county."

Now, it is stipulated by counsel that the resolution just offered is the resolution which describes the road shown on the map, exhibit A, to the complaint in the main case, as a coun-

994 ty road, declared a public highway by board of supervisors February 2nd, 1916, and the road which is described on the map.

Mr. Burnell: It is so stipulated.

Mr. Anderson: Then we wish to offer from book 17, page 77, under date of March 6, 1916, the following resolution:

"In re Malibu Road: Proposed employment of assistant counsel in trial of case in court. A report by the county counsel dated March 6,
995 1916, relating to litigation of matters connected with the opening of a road through Malibu Ranch, and recommending that Richard A. Dunnigan be employed as associate counsel in said matter, is presented; and on motion of Supervisor Hinshaw, duly seconded and carried, it is ordered that said matter be referred to Supervisor Hamilton and the county counsel for investigation and report."

Next we desire to offer from the same book
996 17 at page 79 the following:

"In re case of Rindge Co. vs. F. H. Joyner, et al.: Order authorizing employment of R. A. Dunnigan as associate counsel. On motion of Supervisor Hamilton, duly seconded and carried, it is ordered that Richard A. Dunnigan be employed as associate counsel to assist the county counsel in trial of case of Rindge Co. vs. F. H. Joyner, et al. The compensation for such service to be the sum of $50.00 per day for time

997 actually engaged in trial of the case referred to."

That resolution is dated March 6, 1916.

We have one more that we wish to offer. Book 19, page 108. Dated December 31st, 1917, of the minutes of that day, commencing on page 105, "Office of the Board of Supervisors of the County of Los Angeles, State of California, Monday, December 31st, 1917. The board met pursuant to adjournment. Present, Super-
998 visors J. J. Hamilton, chairman, presiding, E. J. Delorey, F. E. Woodley, R. F. McClellan and J. S. Dodge; and H. J. Lelande, clerk, by A. M. McPherron, deputy clerk. In re Malibu road. Resolution correcting minutes of August 26th, 1916. On motion of Supervisor Delorey, duly seconded and carried by the following vote, to-wit, ayes, Supervisors Delorey, Woodley, McClellan, Dodge and Hamilton; noes, none, it
999 is ordered that the following resolution be, and the same is hereby adopted:

"Whereas, a resolution was adopted by the board of supervisors on August 26th, 1916, authorizing the condemnation of certain land for right of way for Malibu Road (said resolution having been entered on pages 34 et seq. of road book 17, minutes of this board; and

Whereas, all five members of this board participated in the adoption of said resolution and voted in favor thereof, but through inadvert-

1000 ence or mistake, the minute entry of said resolution failed to show that all of said members did participate in said action and vote in favor of the adoption of said resolution,

Now, therefore, it is hereby ordered that the minutes of this board of said date, August 26th, 1917, be corrected so as to show the fact, namely: That upon a submission of said resolution authorizing condemnation of land for right of
1001 way for Malibu road, the following members of this board of supervisors voted in favor thereof, namely: Supervisors Hamilton, Norton, Woodley, Hinshaw and Pridham.

(Witness continuing). I have heard the last resolution read, directing that the minutes of the board of supervisors of August 27th, 1916, be so corrected as to show that all of the members of the board of supervisors voted on that resolution which has been offered in evidence to
1002 which your attention was called.

Q. Now, calling your attention again to the resolution on page 344, book 17, minutes of August 26th, 1916, I will call your attention to the fact that it recites in the preamble that "On motion of Supervisor Hinshaw, duly seconded and carried by the following vote, to-wit, ayes, Supervisors Hamilton, Norton, Woodley, Hinshaw and Pridham; noes, none, it is ordered" and so forth. Can you say now, after hearing the other resolution read, whether or not that

1003 appeared in the original minutes or whether a change has been made since the original minutes were written up? A. Whether this entry has been changed?

Q. Yes. A. I don't think so; I don't think there has been any change. I noted that this resolution was corrected a year or more after the date of the original minutes. I did not direct me to change the original resolution, but the intention was that the adoption of that reso-
1004 lution did have the effect of correcting the original resolution by showing the record of what each supervisor voted for. I don't know whether the original records show that.

Q. You have the minutes before you. What I am getting at is whether or not the minutes before you are the original minutes or if they were corrected in accordance with the resolution. A. Does the resolution show that?

1005 Q. Now, this resolution reads that "Whereas, all five members of this board participated in the adoption of said resolution and voted in favor thereof, but through inadvertence or mistake the minute entry of said resolution failed to show that all of said members did participate in said action and vote in favor of the adoption of said resolution," and further reads: "Now, therefore, it is hereby ordered that the minutes of this board of said date August 16th, 1916, be corrected so as to show the fact, namely, that

upon the submission of said resolution authorizing condemnation of land for right of way for Malibu Road, the following named members of this board of supervisors voted in favor thereof, namely, Supervisors Hamilton, Norton, Woodley, Hinshaw and Pridham." Now, does that refresh your recollection as to whether anything was done by your pursuant to that resolution? A. Read the part of it which refers to the book and page.

Q. "Whereas, a resolution was adopted by this board of supervisors on August 26th, 1916, authorizing the condemnation of certain land for right of way for Malibu Road (said resolution having been entered on pages 344, *et seq.* of road book 17, minutes of this board.") A. There is evidently an error in that resolution.

Q. You have no recollection of making any correction pursuant to the resolution? A. I would not have made a correction. As I said before, any resolution of that kind, we make no change in the original resolution at all; our understanding is that that resolution has the effect of correcting the other without adding anything to that.

1009 MAY K. RINDGE,

one of the defendants, recalled for further direct examination.

Direct Examination

By Mr. Anderson:

I have not personally, or as president and general manager of the Rindge Company, received any notice upon any hearing concerning the adoption or consideration of a resolution
1010 such as that of February 2nd, 1916, that you read over a few minutes ago. The same is true as to the matter of the resolution of January 31st, 1916, appearing in book 17, page 16, which Mr. Burnell read into the record with reference to instruction to the county counsel to proceed with the condemnation of property for a public road through the ranch; I did not have any notice of that. I had no notice of any hearing being held by the supervisors concerning the
1011 passage of any of those resolutions which have been read in evidence other than the notice of the hearing, on my request. I have never appeared before the board and testified under oath on any subject in connection with road matters nor produced any witnesses. I have never been advised by the supervisors that I had a right to produce witnesses or testify under oath.

1012 J. C. PATTON,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My name is J. C. Patton. I live on the Malibu Ranch. I am 33 years old. I was born in Oklahoma. I am employed now with the Rindge Company, on the Malibu Ranch and have been
1013 employed there about 18 months as superintendent of the ranch. My duties as superintendent consist of overseeing all work and all stock and the movement of such over the entire ranch. They also include matters connected with the cultivation of the ranch and any matter connected with the general care and patrolling of the ranch if such be necessary. During the 18 months I have familiarized myself with the ranch and its stock, and the various matters
1014 connected with its management. My occupation most of my life has been handling stock and farms, cattle and horses. I have been engaged in connection with cattle and stock about 20 years in Oklahoma, Texas and California on large ranches, mostly. I am familiar with the roads on the Malibu Ranch. The road through the ranch was not closed when I first went to work there; there was gate men, but people had keys and got through, and permission to get through. The road was being trav-

eled at that time. Our method of management with regard to the road that was being used by the public, prior to the time that that road was closed while I was there, was that we kept line riders riding the lines, closing gates, and putting out camp fires, and things that occurred at that time. Possibly six line riders on an average; sometimes less. The condition of the ranch now with reference to fencing and gates between the pastures and the cultivated lands is that there are gates between the fields and the cultivated lands and fences. The purposes of those gates and fences are to keep stock from going into the fields during the seasons when there are crops in the fields, starting in at Las Flores, the eastern entrance, and ending with the Ventura county line. There is a gate at Las Flores that is the entrance; the next gate is at the warehouse; the third at Malibu creek, and the fourth at Winter's canyon. That is just across the Malibu flat, just where you go upon the rise. The next one is near Puerco canyon, possibly half a mile west; that is east of Marie. The next one is near Marie Canyon; the next one is near Sosto; the next one is at Latigo. Then there is also one at Sosto, then Latigo. The next one is on the hill above S. Grade, which is located just at the top of the Latigo canyon as you go up on the mesa, where the road enters the field. The next gate is

1018 about—I can't describe the place, but about three-quarters of a mile west of this gate in the middle of the field—west of Escondido and about half way to Ramirez, right on the bridge. The next one is at the east edge of Ramirez canyon; the next one at the west side of Ramirez; and the next one at Zuma, east of Zuma canyon, eastern edge of Zuma; and the next one at the western edge of Zuma; the next gate is at La Chusa, on the left side after you cross
1019 the bridge; and the next is where the road went down to Nicolas, on the west side of Nicolas, after you cross the Nicolas.

Q. State whether or not there is any fence now on the ranch at the Ventura county line? A. Yes, there is now; a five wire fence, new. There is a fence at the western boundary. The Rindge property which is under my management extends beyond the Ventura county line for about a mile and a half, and at the western
1020 boundary of that land in Ventura county there is a five wire fence. From my experience in handling this ranch and other large cattle ranches, it would be necessary in protecting and guarding the fences to the ranch and these various places where the gates now are, in the case the gates were removed and a road was opened through the ranch and left open at each end, to have a guard where this road enters all fields, if it was not fenced, in order to keep the stock from

1021 going down and into the fields and getting off the ranch; that would necessitate a guard at each of those entrances; that would be a constant guard, night and day, to keep them out of the fields; it would require three men at each of these entrances; three shifts of eight hours. It would have to be guarded continually. I am engaged in employing men for the ranch and have been. I know the prevailing wages that are paid for men to do that character of work;
1022 we usually pay $60 a month. That includes the board and horses and everything furnished.

Q. Have you any idea—do you know from your own knowledge what it costs to board—costs the ranch to board one of those men?

Mr. Burnell: That is objected to as incompetent, irrelevant and immaterial.

Mr. Newby: The only purpose of this is to lay the foundation for the subsequent testimony that therefore fencing is necessary. If they will
1023 concede that fencing is necessary, we don't care to press it any further.

Mr. Burnell: Certainly we concede that fencing of a road going through any ranch is necessary.

Mr. Anderson: Then we will not press it any further.

Mr. Burnell: I don't want to lay any foundation for possible misunderstanding. We concede that it will be necessary to fence, I won't

1024 say every foot, because there may be places where the road goes so near the shore that a fence on one side would keep the cattle out, but along a good portion of the road it will be necessary to fence probably both sides of the road, and at others one side, if necessary, lying parallel with the road, for the purpose of keeping the cattle out of the field and out of the road.

Mr. Anderson: Very good.

1025 Mr. Newby: That is the only purpose.

Mr. Anderson: Now, Mr. Patton, are you familiar with the general surroundings of that ranch?

The Witness: Yes sir.

Q. With the roads that are adjacent to it? A. Yes sir.

Mr. Anderson: Let me have the map, if the court please, in the Alisos canyon case—that is,

1026 the complaint.

Q. Are you familiar, Mr. Patton, with the—

The Court: Are you going to use that?

Mr. Anderson: Just temporarily, just for identification.

The Court: You had better put up the easel. Is that exhibit "A" that you have there?

Mr. Anderson: Yes. I think I can ask the witness a question. Mr. Patton, do you know the point on the northern boundary of the Malibu Ranch where this proposed road terminates,

1027 the proposed road shown on the map, Exhibit "A," in case No. B-59443? A. Yes sir. I know whose property lies immediately to the north—Charlie Decker's. The residence of Mr. Decker from the point where this road that we are talking about terminates on the northern boundary line of the ranch is about half a mile. There is no road now at any point between the northern boundary of the ranch and Mr. Decker's residence. There is no road there now.
1028 There is a road from Mr. Decker's residence to the north by which he gets in and out to his place. That road runs down to Triunfo. That is a wagon road; I think it can be used by an automobile; I don't know that automobiles have been as far as the Decker place. I know that an automobile has been up on that road to possibly two miles north of Mr. Decker's. The road is a good wagon road for the mountains.

1029 Mr. Anderson: Take the witness. We are not going into the damage now. We expect to use Mr. Patton for that.

Mr. Burnell: Yes, I understand.

Mr. Anderson: And that may be repeated as to any witness.

Mr. Burnell: Yes, I understand.

Cross-Examination

By Mr. Burnell:

I have been over this road that leads from Triunfo to the Decker place. In my opinion and

1030 my experience it is not suitable for the hauling of heavy loads from the Triunfo post-office to the Decker place; it is suitable for a two-horse wagon, fairly loaded, I would say a thousand or fifteen hundred pounds. Triunfo is just a little post-office on the state highway that goes from Los Angeles up over Cahuenga Pass and over the west side of San Fernando Valley through Calabasas up to Ventura.

Mr. Anderson: Mr. Burnell, can we stipulate
1031 that that state highway connects with the Topango Canon road

Mr. Burnell: Oh yes.

Mr. Anderson: And that that Topango Canon road goes through Topango Canon down to the coast and along the coast to Santa Monica and Venice?

Mr. Burnell: Oh yes, I will stipulate with you on any facts that we agree on.

By Mr. Burnell: Q. Now, Mr. Patton, an
1032 automobile, according to your best information, could not be driven from the state highway up the Triunfo road up to the Decker place, could it? A. I am not in a position to say. I seen one about two miles north of Decker's and I don't know why they could not come on down. I have seen them about two miles from Mr. Decker's place. I am fairly familiar with the use of the automobile. I have traveled with them and have driven them.

1033 Q. When you speak about automobiles, I don't mean a trick, some stunt driver would pull off, but the use of the road by the ordinary driver of automobiles. With that understanding do you think that the road from Triunfo post-office to Mr. Decker's place is a practical automobile road? A. No sir. I haven't found, in my experience in managing ranches at the present time, that the automobile is used very extensively by ranchers for purpose of going
1034 back and forth from their homes and hauling their products; I don't use mine. The conditions on this particular ranch is so we cannot use an automobile successfully. Therefore, I don't pretend to make any use of it. The condition of the Malibu is that it is a stock ranch. We cannot go after the cattle in an automobile; therefore we take a horse. We use the automobile to go to town. The Rindge Company, or Mrs. Rindge, have two automobiles, I be-
1035 lieve. They use them to get on the ranch.

Q. Is there any road leading from the Decker place down to the edge of the Rindge property? A. I believe not.

Q. Has there ever been since you have known the property? A. There has been one that went around the hill and finally found its way onto the ranch. There is another road which comes down Encinal Canyon, from Decker's. That road is not in use at the pres-

1036 ent time; it has been; this road was used up until July of 1917. The gates were then locked by the Rindge people's employes.

Q. You told us on your direct examination about people having keys to the gates on the Malibu property; were those keys which unlocked all of the various gates which you have described? A. No, sir.

Q. How did they get through the gates at that time? A. Since I have been on the ranch,
1037 there was men on the upper and lower gate.

Q. Then the keys unlocked the gates between A. No, the road used by them did not include the gates, only the upper and lower.

Q. So there was a road through the ranch which was not fenced? A. Yes.

Q. Did you find any trouble with your cattle wandering down on that road? A. Yes, we found there was two or three gates which were
1038 used that were not locked, they were left open, people that went through them left them open, the upper and lower gates were locked but the gates between were not. I don't know of anyone excepting the ranch officials or friends, that had keys. The total number of persons that had keys was six, I think, possibly seven. Those people had permission to use the roads and had to use the keys to get in and out. People with keys usually came from Santa Monica, or Los Angeles in automobiles. They came up on the

1039 ranch on business. The people that traveled through the ranch from the canyons, Los Alisos and the others, after the road was closed up, were kept out of the ranch; if these people wanted to come down from the canyons and go to Santa Monica, they had to go around.

Q. What is the Yerba Buena settlement? A. I am not familiar with the names. It is where Mr. Fitzpatrick lives and several others—I don't remember who. About ten or twelve families.
1040 They used to come down through the ranch on the way to Santa Monica; since the roads are locked up, of course they can not do that any more. This Yerba Buena settlement is about four miles north of the extreme northern end of the ranch or the west end, as we call it, up the canyon; at the head of Yerba Buena Canyon. Those people used to traverse the ranch from one end to the other to get to Santa Monica;
1041 they went down to get supplies. Now they go through to the state highway and down.

Q. They have to travel around through Calabasas and down the west side of the San Fernando Valley through the Cahuenga Pass, through Hollywood, and then out over what is called the Sky Line Boulevard to the beach? A. I don't know; I couldn't tell you; I am not familiar with those roads.

1042 *Redirect Examination*

By Mr. Anderson:

Q. How long has it been since any of those people you claim lived in Yerba Buena Canyon have been permitted to go through the ranch? A. Since about the 1st of August of last year.

Q. How long has it been since any settlers other than those have been permitted to travel through the ranch? A. None since that time. It has been a year ago last August since anyone
1043 who had a settlement back in the mountains, east of Zuma Canyon, has passed through the ranch over the road. None of them have been permitted to make the trip since.

Q. Do you know whether or not there is any place besides Santa Monica and Venice that these people can get supplies? A. From the Yerba Buena settlement it is only 18 miles to Oxnard. From Triunfo to this settlement is about 8 to 10 miles; to Camarillo, I can not say.
1044 From Charley Decker's place to Triunfo is about 7 or 8 miles. I refer to the post-office on the highway as Triunfo. There is a store at Triunfo; there is also a store at Calabasas, about six miles from Triunfo, right on the state highway.

Q. Is there any public road on the ranch in Ventura county from the Ventura county line to the west

1045 Mr. Burnell: That is objected to as incompetent, irrelevant and immaterial.

A. Yes sir.

The Court: Did you hear the answer? I don't think you would have objected if you heard it.

Mr. Burnell: May be I will reconsider the objection.

The Court: Read it.

(Question and answer read.)

1046 The Witness: I didn't understand the question.

The Court: What is your objection, Mr. Burnell?

Mr. Burnell: Objected to as incompetent, irrelevant and immaterial.

Mr. Anderson: We move to have the answer stricken out, Your Honor. The witness says he didn't understand it.

1047 The Court: It will stay in the record. The record is made and I am not going to change it now.

Q. By Mr. Anderson: What roads are there on the ranch between the Ventura county line and the extreme west end? A. There is one road, leading up to Yerba Buena.

Q. How far is that store from the Yerba Buena settlement? A. From the mountains, about six miles. They can get to it by the road which they use by going over the highway, the

1048 other way. It is a store which carries general supplies. Cornell is located on the southerly part of the Russell ranch; that is about twelve miles, I would judge, from Yerba Buena settlement. That carries small supplies. From what I call the Yerba Buena settlement, down through the Malibu Ranch, along the coast road to Santa Monica is about 45 miles.

Recross-Examination

By Mr. Burnell:

1049 These various store places which I have mentioned are some of them in Ventura county; Oxnard, Camarillo and Strawberry Park are in Ventura county. From Oxnard to Yerba Buena is eighteen miles, I believe they call it. The store at Strawberry Park seems to carry most everything. I have had experience in buying merchandise and supplies of household goods. I find I can buy those things as cheaply

1050 at a country store such as Yerba Buena, Cornell, Calabasas and so on, as I get in the larger places such as Santa Monica and Ocean Park, and oftener you can get them cheaper. There is no post-office on the Rindge Ranch. There is no place there that is called Spanish supply post-office that I know of.

Q. By Mr. Burnell: Mr. Patton, is it possible for you to go from Yerba Buena settlement to any point on the Ventura county highway by any of the directions which you have

told us about with a loaded wagon over those trails? A. I couldn't say as to that; I haven't been over the trails.

Q. You don't know that it is a fact that they are merely horse trails that are so steep that a man cannot ride over them? A. I don't know.

Q. You have never been from this Yerba Buena settlement to any of those points that you have mentioned, Oxnard, Camarillo, Calabasas, Strawberry Park and Cornell? A. No sir, not directly from that settlement.

The Court: There is a question I would like to ask. You have referred to this Decker place, Mr. Patton; are there any settlers up there other than Mr. Decker? A. Yes, possibly eight or ten families within a radius of four or five miles. They live toward the ocean from Triunfo post-office, between Decker's and Triunfo. Decker's place is the furthermost place south. I know where the alfalfa patch is at La Chusa Canon. Mr. Charles Decker lives from that alfalfa patch about two and a quarter miles or two and a half. The kind of family Mr. Charles Decker has is a wife and five or six children. The next person to the north with reference to that alfalfa patch is a school teacher who lives about a quarter of a mile north of Decker's, contiguous to the road that Decker uses to get to Triunfo. The school teacher has one or two children. I know a family named

Malden. It consists of two or three children, about the place, and I don't know what the family relations are. There is a Mrs. Malden who lives there with her children. The Malden place from the alfalfa patch is two and a half miles north and a half mile west of this road which you call the Triunfo road. I know Mr. Ernest Decker and his family which consists of a wife and a child. His place is north from the alfalfa patch probably two and a half miles and a mile east. I know a Mrs. Mabel Kelph. She has a place up there. She lives up there only occasionally. I do not know what she does or who she is. That place with reference to the alfalfa patch is possibly two or three miles north and a half a mile east of the Triunfo road. I know a family named Parkes. I couldn't say whether there is any children or not. Mr. and Mrs. Parkes. That place with reference to that alfalfa patch and the Triunfo road is three miles north and a mile and a half west. They came in there sometime last year. I know a man named Humphrey. There are just him and his wife, I think. They live about three and a half or four miles north of the alfalfa field right close to the road mentioned. There is some other settler up there whose name I don't know; another house, but I don't know who lives there. that is located about a half a mile from Humphrey's still further north. I do not know

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1057 whether or not he has a family. I know a family named Vaughan, consisting of wife and some children. This place from the alfalfa patch is about five or six miles, right on the road. I know of one new settler who has come in recently; he is located just about a half a mile west of Malden's, or it would be about two miles north of

Q. (interrupting.) Do you know any other families between Trancas Canon and east of
1058 Sequit Canon, on the west, to the top of the ridge? A. There is another family up there on the top of the ridge. They are possibly seven miles from the alfalfa patch. There are no others than you have mentioned or I have testified to that I call to mind. I am familiar with the Trancas and Sequit canons; they are deep rough canons. All of those families that I have mentioned have access to the Triunfo
1059 road. The school house up there is possibly a half or three-quarters of a mile north of Decker's place. Charles Decker's place, about three miles north, from the alfalfa patch, probably a quarter or half mile east. That is on the road now used by Deckers, not on the ranch property. It is north of the ranch, the house is possibly a mile north of the ranch on the so-called Triunfo road, on Decker's property. I have had occacion to investigate and ascertain the amount of land which is in cultivation by these various peo-

1060 ple that I have been testifying to between Trancas and Sequit and north of the Malibu. I ascertained how much. All of them in the whole lot in the section mentioned, have, I would judge, something like 330 or 340 acres; that is, these people whose names I have given, all the people mentioned; that will be between Trancas and Sequit.

Cross-Examination

By Mr. Burnell:

1061 By "land cultivated" I mean land that has been sown to some crop. I would not call land that cattle ranges over cultivated land. My answer had reference to the amount of land these people had cultivated in the crops. I have not been over this land myself and measured it. I got my information and knowledge as to the facts that they cultivate about 330 to 340 acres, from what they have said. My information is

1062 just derived from someone else, what someone else has told you. I have no knowledge of it myself, only what they have told me themselves, that they had that amount in cultivation. That information includes information and knowledge as to the number of cattle that they may own. I know how many cattle these people own. I can tell you accurately: They own in numbers somewhere around 30 or 40 head. I know why they don't own more. A good many of them died last winter. I suppose nearly half of the

1063 number that was there last winter died during the drought, last winter. It is not one of the reasons that causes that destruction of cattle that they can not get them in or out; they can get cattle in and out by this Triunfo road. That is the only way open. They take them, to get them out, either up or down the Ventura state highway. The Ventura state highway has a cemented center and dirtway on either side, so the cattle are not forced to travel on cement. I
1064 do not know where is the nearest point from the Decker place where a doctor is located—Oxnard, I guess. If there is any physician in the mountains, I don't know. I do not know Mrs. Elizabeth Haney; I know of her. There are in her family three children, I think. Really I can't say just where her place is located. I have never been to her place. I know her as one of the so-called settlers; she lives away back to-
1065 wards the divide. I don't know just where her place is located. I know Peter F. Roller. I didn't mention Mr. Roller. He is seldom there. He has a place up there. I know why he is seldom there; he is a business man in the city.

Q. Isn't one of the reasons that he cannot drive a machine over this very *step* road? A. He can drive a wagon over it; he can not drive a machine over it.

Q. Do you know whether Mr. Roller owns a wagon? A. No, I think not.

1066 Q. Do you know whether he owns an automobile A. I don't know, I am sure.

Q. Have you seen him driving either kind of vehicle? A. I have seen him driving an automobile. I don't kno whether he owns one or not. I have not seen driving himself; I have seen him riding wi ne one else driving it. I have never seen him driving a wagon. In Mr. Roller's family there is a wife, I think. His place is over in Trancas Canyon. I believe
1067 it is the other side of the line where you mentioned. That is the reason it was not mentioned. I think he is across the line east of Trancas. That place from this alfalfa patch mentioned by Mr. Anderson must be six or seven miles; six miles probably. I mentioned Mr. Vaughan; I said he had a wife and child. His place is located from Mr. Decker about three miles and a half, what I would call north or northeast. All
1068 of these people whose names I have mentioned have access from the respective properties where they live up there in the mountains, to and from those places owned by them, over this steep road from Triunfo post-office; that is the Triunfo road that they use. I do not know the width of that road or the grade. I do not know Mr. C. S. Herron. I have heard of him, but I don't know his place. I do not know where his place is. I know Mr. F. H. Thew. His place is over on the Trancas somewhere in that neighbor-

1069 hood. I don't know how many in his family. I do not know Mr. Arthur Auld. Probably there are a good many of those people that have places there that are never there that I have not seen, and I only called off all the people that I knew that lived there. Some of them I have heard of and have never seen them.

Q. Do you know how many people have places up there in those mountains? And when I say "those mountains" I mean up in the can-
1070 yon by the Malibu Ranch. A. 24 families, I believe it is from Las Flores Canyon to the county line.

Q. Those are families that live there? A. Yes sir.

Q. Do you know how many people own land or are interested in land in that locality who do not live there? A. There are numbers that do not live there that I don't know. I do not know
1071 Mr. William Kelso. I have heard of him. William Kelso's place is away back up about the head of the Trancas, somewhere I think. Louis Berger—if I have the right impression of his place, it is about the divide between the slope towards the valley and the slope towards the ranch. I mean the San Fernando Valley; in other words, he is *an* the crest. I don't know how many in Mr. Burger's family; I think he has a wife and three or four children. I have heard him mention children. His place from

1072 the alfalfa patch Mr. Anderson was talking about must be eight or nine miles. I don't know Mr. Walter Kielhofer. I know C. H. Weiss. I think I met him once. I think he has a place up there near the Trancas. I think it is east of the Trancas. He is not one of the neighbors of the Deckers. I think it is quite far away; I don't know the location of his place. I do not know any one by the name of Lulu Carr. I mentioned Ernest Decker; he has a family of a
1073 wife and child. He is about a mile east of the Charley Decker place; he uses the same road as Charley Decker, and that is the only road he has. I know Ralph Kincaid. Mr. Kincaid's place is by the Trancas Canyon laying just off of the Milton ranch. I don't know how many acres Mr. Kincaid has, or the Kincaid family—I have been up to that place. I can't give an estimate, from my general knowledge of the
1074 facts, of how many acres they have; they own several pieces running off in different directions; a small piece of it is under cultivation.

Q. How many people in Mr. Kincaid's family? A. All that lives there is a hired man; I do not know the hired man's name; he is a one-armed fellow. I know Mr. Keppler. I do not know any family named Malloy; I have heard of it. I don't believe they own land up there in that vicinity; I wouldn't be positive. I have heard of E. M. Smashey as a property owner

1075 up there. I don't know where the place is located. I can't say I know anyone named Moffet. I have heard of Moffet but I can't place whether it was in the mountains or where.

Mr. Burnell: I think that is all.

Redirect Examination

By Mr. Anderson:

Q. This Mrs. Haney, is her place on the north or south side of the ridge or divide? A. Really I can't say. I don't know just the loca-
1076 tion of her place. It is within the location I spoke of between Trancas and Sequit; it is in there. I am not positive as to the house of this Mr. Roller, but he is close to the Trancas, but on which side I am not sure. The distance from Mr. Decker's place to Triunfo post-office is about eight miles, and from Decker's place to the alfalfa patch is about two miles and a half.

(Adjournment was taken until Friday, Oc-
1077 tober 4, 1918, at ten o'clock A. M.)

Friday, October 4, 1918.

ALBERT J. OTIS,

a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newby:

My name is Albert J. Otis. I reside in Los Angeles. My business is building fences, woven wire and barbed wire fences and so forth. I

1078 have been engaged in that business 12 years, individually, as proprietor of the Los Angeles Fencing Company, and during the twelve years I have had occasion to build or contract for the building of fences through ranch properties in this county. I have examined the Malibu Ranch; I went from one end to the other of it in an automobile. As to the line of the proposed highway, Mr. Culver showed me where the road was to be surveyed, and we were on
1079 the road part of the way and where we were not on the road he showed me where it would be built; and afterwards I saw the county map as proposed, the proposed county road, and went over it very carefully from one end to the other, both the main road and the side road or the road that goes up in the canon. From the examination that I made of the ranch property and the proposed highway, I got possession of
1080 sufficient data to express an opinion as to the cost of fencing that rancho, and I have made an estimate of it.

Q. Will you please state, Mr. Otis, the kind of estimates that you made with reference to the fencing needed; that is, the character of the fence? A. I made an estimate of the cost of barbed wire fences I saw on the place; that is, I saw a four barbed wire fence and the fences they are putting up there now were five barbed wire fences; and I made an estimate of the cost

of building a five barbed wire fence; also an estimate of building a woven wire fence, which would be practical for the place. My business is the construction of fences; and as to which is the most practical fence for the place, I would say by all means a woven wire fence, as that is the only fence that would be practical; on ranches where other stock and horses and cattle are raised we generally build woven wire fences, for the reason that they are a great deal more practical. A barbed wire fence in order to make it hog-tight, you have to stretch so many wires that it makes it more expensive than a woven wire. Even for cattle, the cattle stick their heads through the wire and crowd through where there is better feed on the other side of the fence; and therefore a woven wire fence is a much better fence for all purposes of a ranch. In the course of my business I have been called upon to build fences to turn hogs, sheep and cattle; I have built a great many fences for all those purposes, and the persons with whom I have dealt have requested me to recommend the various types of fence that was to be used for those different purposes; I am often asked my opinion as to the most practical fence to be used on a property we are putting a fence on. I have studied the question; it has been my business, building fences. That is my business, the building of

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1084 fences for those difference purposes. My business has been principally the construction of fences, and in that business I have built all kinds of fences and the different characters of fences according to the needs of the place. Generally the purchaser knows the requirements of the place, and as a general thing has a general idea of the requirements as to a fence on the place, and he often advises with me where he is going to employ me to put up the fence, as
1085 to what I think is the best fence to put on the place. I made an estimate of what I think is probably the most practical fence needed for the Malibu Ranch, assuming that the ranch is used for cattle and sheep, and a hog ranch, and horses, considering the cost of materials and labor, specifying a fence that is 52 inches high, of woven wire, and above that two barbed wires, heavy barbed wires about 6 inches apart,
1086 making a fence 5½ feet high. The posts for this fence would be all of No. 1 merchantable rough redwood, the corner and end posts would by 4 by 6, about 3 feet in the ground, well anchored and braced to hold the fence permanently tight. The line posts to be 4 by 4, 16 feet apart. That is the general construction. I made a detailed estimate of the cost of such a fence through the Malibu Ranch, following the proposed route, covering all of the details of

1087 material and labor, as well as I could estimate it. I have such an estimate with me.

Q. Just read the estimate? A. (Reading.) "Estimate of woven wire fence which is to be made up of 4x6, end and corner posts, three feet in the ground well anchored and braced; end posts 6x6; line posts 4x4, two and one-half feet in the ground. This lumber all merchantable rough redwood No. 1. Line posts about 16 feet apart"—they have it six feet here, but
1088 that is wrong, it ought to be sixteen. "Under head of woven wire, woven wire for this fence to be 1452 6" stay, American fence, with two strands of genuine Glidden barbed wire above to make a five and one-half foot high fence, all posts to be creosoted from the bottoms up to four inches above the ground. Estimated as follows: 330—4x4—8 ft. posts, making 3520 feet, at $39 per thousand plus freight and dis-
1089 tributing on the job, $12, making $51 per thousand for the lumber distributed on the ranch—distributed on the job. "That makes $184.98 for the necessary posts and braces to build a mile of straight fence. Where the fence is built without any curves or angles. That is a mile. Now, this estimate on the fence is where it is straight going. 320 rods woven wire at 80 cts. per rod, $256.00; fifty pounds of staples at 7 cts., $3.50; creosote and creosoting, 340 posts at 10 cts. each, $34.00. Two strands of

barbed wire which will weigh for a mile, 720 pounds, at 7 cts., $50.40. Now, for the freight. For the barbed wire, etc. Barbed wire weighs 720 pounds, staples 50 pounds, 320 rods woven wire, 4064 pounds, tools, camping equipment and so forth, 500 pounds, total 5334 pounds, at $6.00 per ton for the freight and $2.00 per ton for distributing on the job, figures $21.33. Now for the labor I estimate that one man can complete one hundred lineal feet of fence per day of this woven wire fence with two barbed wires above, or 53 days at $4.50 per day—$238.50. Now the total for this is $788.71. That is for one mile. Now, we add ten per cent. for overhead expense and profit for the construction of the fence in the field, added to the other, makes a total of $867.58. There is about seven miles of that fence to be built as near as we can make out the estimate, at $867.58 per mile. In addition to that there is about eleven miles of fencing that is on rough ground and where the road curves and goes down into the canyon and so on, and while it is more difficult than straight-of-way, it is not as difficult as some of the work to be done on the ranch; about eleven miles, estimated as follows, in addition to the expense of straight fence which is $867.58, we require extra for above conditions, 20 extra posts, 213 feet at $51.00, $10.86 tar and tarring for twenty posts, $2.00; extra spikes and

1093 nails $1.00,—$13.86. Extra labor—now in this fence the men will build about sixty feet per day day, which gives about 35 extra days labor to build a mile, at $4.50, is, $157.50; add to that ten per cent. profit and overhead, gives a total $1056.07.

Q. Now, Mr. Otis, before passing from that, you said there was about eleven miles of that type of ground? A. Yes, sir.

1094 Q. Was that on the basis of the entire length being 22 miles? A. Yes sir.

Q. You did not figure on both sides of the road? A. I figured there was about sixty miles of fence; you just double this. This is one side of the road; this has got to be doubled because it is on both sides of the road. The same with reference to the seven miles. In other words, this estimate is only for one side of the road.

1095 Q. Now, Mr. Otis, please explain to the court why it is necessary to have extra material where the ground is not level, but where it is rough. A. Where the fence is not a straight fence, it is necessary to brace all—not all, but to brace the principal angles, where the road is also built in curves, and where the fence is not straight, line posts have to be anchored and braced in a substantial manner to keep the wire from pulling them over and that requires extra material that I specified. That extra work en-

1096 tails a good deal of extra labor that I have specified, about 35 days to the mile. There is one more. On the ranch there is about 2½ miles, and then also 2 miles, making about 4½ miles of very rough ground, upon on the high ground about 2½, and about 2 miles where the road is to be built up a canyon, a side road; that would require about 79 days extra per mile more, labor, on the straight fence, or $345.50 and the
1097 posts should be 12 feet apart, because there is so many curves that the posts would certainly loosen up, so that I have specified the posts 12 feet apart. The extra braces and blocks are 30 in number, 30 posts, making 147 extra posts or 1568 feet of lumber, at $51, $80.96; creosoting and tarring these 147 posts at 10 cents, $14.70 for that extra expense, totaling $441.16. Add 10 per cent. overhead, $44.11, making a total for that 4½ miles, each mile to cost $1352.85; and
1098 the distance is 4½ miles for that kind, or one-half the fence—on one side of the road; you have to double it—it would be about nine miles. These prices I have specified for labor and material are the reasonable prices for such material and labor at this time. I also calculated the number of offsets necessary to fence this proposed road. I went over the map carefully and with the help of Mr. Culver I counted all the offsets. I mean by offsets where the right of way is widened for the purpose of cutting

1099 or filling the ground, the right of way is widened at points from 5, 10, 15 feet upward, to as high as 75 feet in a place, and each one of these offsets requires extra end posts, required to be well anchored and braced and so requires extra material and labor, and I have made an estimate of the cost of this extra work. I have figured the extra material for the 5-foot offset, 10-foot, 15, and so on. I can give that to you if you wish. For a 5-foot offset, the price I estimated
1100 $9.91, estimating as follows: One rail extending from one end post to the other, one 3 by 4, 5 feet long, Oregon pine, makes 5 feet of lumber. Two end posts, two 4 by 6's, 8 feet, 32 feet, rough redwood. Two braces, two 4 by 4, 8 feet, 21⅓ feet. Two anchors, two 2 by 3, 1⅓ feet. Two brace blocks, two 2 by 12, 3 feet long, making a total of 71⅓ square feet of lumber at $39, $2.81. Freight at $6 per ton,
1101 cartage at $2; that is, cartage and distributing it on the job, $8 per ton. Figuring the lumber will weight about 3 pounds to the square foot, that makes 72 feet at $12.86. Tarring, 2 posts, 2 braces, 2 blocks, 19 cents each, 60 cents. Staples, spikes and nails 14 cents. Just a moment. It is 20 cts. Labor —one day's labor—they have it here, two barbed wire, one day's labor $4.50, total $9.01. Ten per cent. for overhead and profit, $9.91. Now then, for a ten-foot offset it will

require the same cost as above, $9.91, and the additional length of a rail, five feet, 25 cents. That makes a ten-foot offset cost $10.16. A fifteen-foot offset required two rails, two 3x4, seven 14 ft, rough O. P. Two end posts, two 4x6s eight feet, thirty-two feet rough redwood. Two braces, two 4x4 eight feet, 21⅓ feet. Two anchors, 1⅓ feet, two brace blocks, 2x12 three feet, twelve feet. One line posts. That is, an extra post between the two end posts, one 4x4 eight feet, ten and two-thirds feet. Total 91⅓ feet, and $39.00, cost of the lumber at Santa Monica, $3.56. Freight and cartage and distributing at $12.00, $1.10. Tarring three posts, two braces, two brace blocks, 70 cts. Spikes, nails and staples, ten cts. 75 feet of barbed wire, 5 strand, 15 feet each, 5½ pounds at 7 cts., 36 cts. Labor, 9 hours, about $5.00, $10.82. Add ten per cent., making $11.90. Now, here is the twenty foot offset. Two rails, two 3x4, 10 feet, 20 feet rough O. P.

The Court: Just a moment. I want to save as much time as we can, gentlemen. What is the necessity, or the sense, of requiring him simply to read a document which can be filed here and copied later, and taking up the time now.

Mr. Newby: No need.

The Court: Then it may be considered that he would testify orally as he has written it out,

and the writing may be filed and copied into the record.

Mr. Newby: All right. We would like for the witness to testify to the totals of the various items. A. Yes sir.

Q. We can file that as the testimony of the witness. We will ask Mr. Otis, to please testify to the total amount, in dollars and cents, of these various anchors. A. Yes sir. I might begin at the first. Five foot offset $9.91;
1106 ten foot offset—May it please Your Honor, we have a number here of these offsets as shown on the map also.

Mr. Newby: What I would like, Mr. Otis, is for you to testify to the number of five-foot offsets, the cost of each and the aggregate cost. I have not the aggregate cost before me, but I have now, for instance, five-foot offsets 116 in number, $9.91; ten-foot offsets, 101 in number,
1107 $10.16; 49 of the 15-foot offsets, $11.90; 48 of the 20-foot offsets, $12.37.

Q. That is, each? A. Each, yes, sir. 28 of the 25-foot offsets, $13.81 each.

The Court: Let us get that figure now. It is written in this estimate—here is the estimate on the 25-foot offsets. A. $13.81.

The Court: I will make the change here, gentlemen.

A. 49 of the 30-foot offsets, $14.20 each. Ten of the 35-foot offsets, $15.89; six of the

1108 40-foot offsets, $16.28 each; seven 45-foot offsets, $18.56 each; eight 50-foot offsets, $18.95 each; three 55-foot offsets, $18.65; eight 50-foot; three of the 55-foot, $18.65; one 60-foot, $18.77; one 65-foot, $18.91; two 75-foot, $19.90; making a total of 429 offsets, which make a total expense of $5,480 and some cents. I have not got the cents.

Mr. Newby: You mean $5,098.69.

Mr. Anderson: $5,480.

1109 The Court: Well, which is correct? There is a difference of $400.

Mr. Newby: That $5,480 includes something else. It is simply a matter of calculation.

A. Yes, sir. That is for the offsets that I have read. In addition to that, on Alisos Canyon road there is one 5-foot angle, $9.90; eighteen 10-foot offsets, one 15-foot offset, eight 20-foot offsets, one 25-foot offset, total 29 in

1110 number, figured at $317.46. Also Alisos Canyon road from main road to the beach along the alfalfa field, two 10-foot angles, one 25-foot angle—they call these angles here; I call them offsets—one 30-foot offset, one 35-foot offset, five in number, total cost $64.22. The first total on the largest number that I first read was $5,098.69; the next was $317.46, and the last one $64.22, making a total for the job of $5,480.37 for those offsets; that is, in addition to the other estimate of building the fence, which

1111 is extra work. The first estimate is for a straight fence right along, and these offsets I figured the extra posts and labor and material required in each one of them. These estimates of the offsets include the total number for both sides of the road, following the map of the proposed highway. I followed the map from one end of the job to the other, went through it and added them up as carefully as I could, with the
1112 help of the engineer. And that is the number that I arrived at. I also made an estimate of the cost of a barbed wire fence and not a woven wire. I did not estimate for a four barbed wires; I estimated for the five barbed wires. I have it here. Estimate of cost per mile of fencing, proposed country road through the Malibu Ranch, for the Rindge Company, October 1st, 1918. Posts 4 by 5 by 7, split cedar it is here. They may be either cedar or split
1113 redwood. They cost about the same. At the present time it would be difficult to get the split redwood. The split cedar posts could be obtained, so I am informed by lumber companies handling the material. Posts at 30 cents each, for one mile, these posts 16½ feet apart, 320, at 30 cents, $112. Extra for curves and braces, 20 in number, 7 feet long, 35 cents, $7. Tar and tarring, that means labor—at 10 cents each, $34. Now, for the wire. Five strands of Glidden—that is heavy barbed wire suitable for the pur-

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pose, 5,280 feet in a mile, makes 26,500 lineal feet of barbed wire. That barbed wire goes 14.30 feet to the pound, making 1860 pounds. Staples and spikes 40 pounds, 1900 pounds at 7 cts., $133.00. Freight for the posts,—they will weigh about 8500 pounds—wire and staples, 1900 pounds, camp tools, equipment and so forth, about 500 pounds, making a total of about 10,090 pounds, or five and a half tons, at $6.00 per ton, $33.00. Distributing on the job $5.00, $38.00. Now, the labor for building a mile of fence, 5,280 feet, at 12 cts. per lineal foot, $633.60. Compensation insurance for the men, $16.63. Now, I would like to explain that that price of 12 cts. a lineal foot means the expense of building the fence, not only on the even ground but also on the roughest ground. This is an estimate of the cost from one end of the job to the other, and there are 60 miles of fencing. Ten per cent. for profit and overhead, $90.42. Making our estimate for building a mile of five-strand barbed wire fence, $1,071.65.

Q. Now, approximately what would be the difference between the cost of a five wire fence and a four wire fence? A. Well, there would not be very much difference. It takes about the same posts and about the same labor. It would be somewhat cheaper. I have not estimated that.

Q. It would be the deduction of the strand of

1117 wire? A. Yes, sir, but that would not be a sufficient fence.

Q. You did not figure that, because, in your opinion, it would not be sufficient for the ranch purposes? A. Exactly.

Q. Now, what kind of posts did you use on that? A. Split posts; split redwood or cedar posts. They are approximately the same cost. In my estimate of the five wire fence, the prices that I have given are reasonable prices for labor
1118 and materials that would go into such a fence at the present time. That amount I have charged there for overhead and profit is a reasonable price for such work and superintendence. That is the way we estimate our work all the time. I also made an estimate for the price of farm gates. I have that here. If the road is put through the property it would require a number of gates to let the stock from one side to the
1119 other. My estimate of the cost of building farm gates is $28.09 each installed. These gates would be made like I saw the gates on the ranch, and I think they are a very good gate for the purpose, as good as I have seen, or built. They are made of five pieces of 2x6, 16 feet long—the opening between the gate posts is a little over or about 16 feet, also five 2x6 spiked on each side of the horizontal—I could draw that gate out so I could explain it on the board.

The Court: You may do so.

1120 (Whereupon the witness drew a diagram on the board.)

Q. Now, you have placed upon the board a diagram of the type of gate? A. Yes, sir. There will be five 2x6—16 feet long, and four 2x6 spiked on each side of the long piece of lumber and one from this one here, which would make nine pieces of 2x6 or forty-five pieces,—one 4x4x12 feet, for the staff of the gate, then
1121 one 6x6 of that lumber—and this lumber would all be rough Oregon pine. For those long posts we have one 6x6—16 feet long, about 3½ or 4 feet. Those are the posts that the gate hangs on. It has to be put in deep so that the gate will not sag. 16x68 feet long for the latch post, two braces 4 by 4, 8 feet; two 2 by 12, for the brace blocks. Now then, three hinges at 90 cents each, latch 30 cents, one iron rod to extend from the end of the gate to the staff, $1.25;
1122 225 feet of lumber at 3 pounds to the foot, 765 pounds; iron, 35 pounds. That is about 800 pounds for the gate and the posts and the braces, that it would weigh, making the freight $2.40 and a day and a half labor for a man to build that gate, to make it and install it, to haul the gate there and put it where it is required. The lumber as I have it above, I have it estimated. cost of lumber $5.50, spikes 25 cents, and the posts and braces $4.78, making a total of $23.13. 10 per cent. profit and overhead, $2.31, making

1123 a total for the gate of $25.44, with the addition of a padlock and chain, a padlock suitable as I think for the place, padlock $2, chain 35 cents, total $2.35. Tarring for the posts and braces, 30 cents—but it would be more than that. That makes a total for the gate installed of $28.07, with the padlock and chain. Now, I would say that that estimate is for the barbed wire fence, and that gate would also be used for the woven wire fence, or could be, by adding the woven
1124 wire at the bottom to keep back the hogs, at an additional cost of about 75 cents or $1.

Cross-Examination

By Mr. Vallee:

When I went up on the ranch I went with Mr. Culver. I think he is engaged in the real estate business, he is a property owner here in the city; he is a real estate agent and appraiser. I understood that he was a surveyor and engi-
1125 neer; he seems to be competent to figure the data on this job, and understands the maps and so forth and from his knowledge I gained that he was an engineer.

Q. He is employed by the Rindge Company?

Mr. Anderson: So stipulated.

Q. By Mr. Vallee: You went up from the road—did you go over that road on foot? A. No, sir, I went over the ranch road, which very nearly parallels the proposed road, in an auto-

1126 mobile, from one end of the ranch to the other, and back.

Q. At any time did you get off the main ranch road? A. Yes, we were off the main ranch road—at one point he drove up on the point, where we could see where the new road was to go down the beach—this is all. My knowledge of the road that was to be built was from traveling over the ranch, on the ranch road in an automobile—that is right. I didn't go

1127 back into the mountains at Los Alisos Canyon, nor into the canyons between Encinal Canyon and Sosto Canyon.

Q. You don't know of your own knowledge how many offsets there are in the road up in that district? A. I could look up the canyon. I have built a good many fences up these canyons, up Beverly Canyon, Fish Canyon, and back of Eagle Rock, and I have a good idea of the

1128 necessary work required to build a fence on a road up a canyon.

Q. In these canyons back of Beverly, did you build a woven wire fence up there, of the kind you have described? A. I built a woven wire fence in a number of places very similar to where this road is to go, about the same kind of woven wire fence; I would say the same kind; they may not be exactly, but practically the same kind; a 5-foot woven wire fence. I have built some fences similar to the one I have speci-

1129 fied, in many instances, in the mountains, over the mountains, in canyons and across them.

Q. The question was did you ever build a fence similar to the one you have described here, with two barbed wires at the top and a woven wire, on any ranch? A. Yes, sir, I have. I remember one I built quite recently and another one that I built with one barbed wire, just exactly like this fence, yes, sir. I have built what I would call a good many fences. I don't know
1130 what you mean by a good many or a great many; yes, I have built about twelve hundred fences in and about Los Angeles, besides repair work that I did not keep account of. I have built a good many miles in the mountains. I worked all summer back of Beverly building a fence for Mr. Doheny, up and down the mountains and over the ridge. And for Mr. Wiley, and one for Doctor Harris up in Fish Canyon, and one in Laurel Canyon, and I built a number of
1131 fences—I built a fence for Mr. Kim, and I built a fence for Mr. O'Melveny, the lawyer, and I built a great many on rough grounds. The first summer I was here I put in all summer building a fence in Eagle Rock Valley, up on the mountain side, and I have a good idea of the labor required to build a fence in the mountains.

Q. Out of these many hundreds of fences you have built on ranches, and through canyons, there was only two of them that were simi-

1132 lar to the one that you have described here, of woven wire, with two barbed wires at the top—is that correct? A. No, sir, I didn't say that. I said I remembered building two fences like the one specified here. I built a number of fences that are about the same. There are a good many different sizes of wire, types of wire, in building fences, and different weaves of wire fence. Sometimes we put one wire above, some-
1133 times two; sometimes three or four. Sometimes we build fences on iron posts, and sometimes we set them in concrete. I could build a good many fences and have a good knowledge of fences in the mountains, and not build this particular kind of a fence. I don't think I built very many miles of five barbed wire fences. I think generally they were woven wire fences. They are not a practical fence for the mountains, I don't believe, as they are hard to put
1134 up and keep the posts straight and hard to break the posts so that they won't fall down, and it is hard to keep the posts permanently plumb, so as to hold the wire tight. A woven wire fence in the mountains is a much better fence, and that is one reason why they generally build them in the mountains. I know that the railroad companies build the fences on their right of way this way, and those fences are built for the purposes I have specified, and they build a great many miles. I built such a fence or a similar

1135 fence, a woven wire fence similar for Mr. Trowbridge, about two miles from Chino, and that fence was a stock fence of woven wire, two barbed wires above and I also just finished one for the George Junior Republic, a fence for their cattle and hogs, it was 51 inches high, woven wire, with one barbed wire above. Also recently I built a fence for Mr. Hopkins, near Pedley, twelve miles this side of Riverside, three miles of fence, hog and cattle fence, woven wire
1136 hog fence, with barbed wire above, and I built a number of fences around Anaheim, around the orange groves. We fenced in forty acres for Mr. Trowbridge up at Chino; for the George Junior Republic about a mile of fence. For Mr. Hopkins about three miles. Mr. Trowbridge's ranch has cattle on it and we put two barbed wires at the top. The George Junior Republic was for cattle and hogs; one barbed wire at the
1137 top. At Mr. Hopkins they haven't any cattle yet, but they are going to put it in. It was for the purpose of stopping cattle and hogs; two barbs we put on there.

Q. Can you name any others besides those three, with cattle ranches, where you built such a fence? A. I built a number of fences for that purpose. I don't recall to mind at this moment.

Q. Isn't that fence, the fence you have described, isn't such a fence, is it, as is ordinarily,

and a great majority of cases, used upon a cattle ranch? A. This fence, as I have specified, is a good substantial fence, and is, in my opinion, a good substantial fence to build; it is a good fence, and a good fence is the most practical fence to build for a cattle ranch. Barbed wire fences are not as good a fence. They are much more easily gotten out of repair and cattle put their heads through the wires and strain them and stretch them until the wire is out of shape. If you will take notice you will see that the barbed wire fences throughout the country are patched and repaired and are fixed up so as to keep the cattle from getting through, where as a woven wire fence makes a permanent improvement. And I would also say in answer to your question—you seem to have the idea that this is an extra good fence, and I would say it is not, not as good a fence as the railroad companies build on their right of way. They place the posts 8 feet apart and in many cases they put a 1x6 from post to post and put barbed wires above and below and so make a fence that is even better than the one I have specified, for cattle.

The Court: What is the object of putting two barbed wires on top of the woven wire fence—to make it more secure? What is the object of putting on two barbed wires? A. The woven wire makes a close mesh fence that the

1141 small animals cannot crowd through, and the animals do not put their heads through it to get the feed on the other side; and the idea of putting barbed wire on the top of the fence is to make it more formidable so when they put their heads over there they get hurt on the barbed wire and they do not do it as much as they would if there was no barbed wire above the woven wire. It takes the principal strain when they try to reach over or jump over the fence
1142 and it adds to the height of the fence also. The barbed wires deter the animals from sticking his head through and from jumping over. I think it adds very much to the efficiency of the fence to put a barbed wire over the woven wire. I think a woven wire is necessary down below, especially where there are hogs and sheep and small animals, goats and small young stock. Young stock will crowd through a five wire bar-
1143 bed wire fence very easily—not very easily, but they will do it.

The Court: I have just one more question: Why wouldn't one barbed wire suffice, on top of the woven wire, instead of two? A. I have specified the fence as 52 inches high, and I put the barbed wire six inches above the woven wire and another barbed wire six inches above that, and then you get a fence that is about five and a half feet high, and there is no space where the cattle can stick their heads through and so crowd

1144 the wire apart and strain it out of shape. It makes a better fence.

The Court: The only desirability, then, is in the height of the fence—the only advantage of the two barbed wires? A. Well, that is the principal advantage, and the other advantage is horses will put their heads—if you put only one barbed wire on, horses will try to put their heads through the fence and crowd it out of shape. If
1145 they get mangy they want to scratch up against it, and if there is a barbed wire or two above the woven wire, they are inclined to leave it alone.

The Court: I cannot see the object of having the two wires. Is a horse more apt to stick his head through the fence if there is only one wire than he is if there are two on top of the woven wire? A. You see, if the woven wire sags any, it is pretty easy for them to crowd it
1146 over. There are no barbs there, and it does not hurt them.

The Court: There is a barb on this fence on top of the woven wire fence. What is the advantage of the additional wire, if there is any advantage? A. Well, there would be a space of about a foot between the woven wire and the barbed wire if we left off one barb wire.

Mr. Vallee: Did you see any of the kind of fence you have prescribed here upon the Malibu Ranch at the present time when you were up

1147 there? A. Not exactly like it, no sir. I saw something near like it. I saw where they are raising hogs there. I saw a barbed wire fence with woven wire stretched along the ground to keep the hogs in. I think that was the regular hog wire; I would say about 26 inches.

Q. And that is all that is necessary, is it, to turn hogs? A. The higher the fence is the better for turning hogs. It is better than a 26
1148 inch fence. Unless you have a barb wire above the 26 inch fence, they are apt to crowd through. It makes a much better fence and much more practical fence. If I was putting a fence in for myself, after my experience in building fences, I would build just such a fence as I have specified. Then I would have a fence that would turn any and all kinds of stock that were put in the field. It is often a great advantage in a ranch to put horses in a pasture that ordinarily
1149 is used for hogs, and so on. On a stock ranch it is a great advantage, and it is a necessity to have a fence that will turn any kind of stock that is raised on that ranch, in my judgment.

Q. A fence with a 26 inch woven wire fence at the bottom and barb wire from there up will turn hogs and will do for a general ranch, will it not? A. Well, their fences there, except the new fences they have put in, the barb wire and woven wire fences, show that a great deal of repair work has had to be done on them to keep

1150 them up. Like every other stock ranch where no woven wire is used—if no woven wire is used, in course of time the cattle crowd through the fences and strain the wires, so they become loose, and then they have to be gone over and repaired.

Q. That is true about any kind of fence, isn't it, that you have to do with, in time? A. Not so much on the fence I have specified, be-
1151 cause it is a substantial fence and will answer the purpose without much labor in keeping it up. Another thing, a fence on a ranch where it is not a very substantial fence, cattle when they get through occasionally, it requires the extra expense of keeping some one riding the fences all the time, and that means a great deal of extra expense, and then the loss of time that is entailed in going after cattle and bringing them back and putting them in the field, and
1152 then sending another man or men out to repair the fence—that is a great nuisance and a great expense. I know that because my father had a ranch and raised cattle, and I was on the ranch and know of the trouble and expense of repairing fences. I know the advantages of a good fence around property. I did not see any other woven wire fence on the Rindge Ranch besides what was used to turn hogs. The only hog fence I remember, woven wire fence, was down where they was raising hogs. That was only a

1153 small part of the total fencing I saw. I noticed that the new fences they were putting in there were all five wire barbed wire fences. I did not notice that all the old fences that had been put in there was four barbed wire fence. I noticed a great many of them were five barbed wire fences, and in some cases they had six or seven barbed wires on to keep the stock back, and even then they were out of shape. Where the fences were in a place where the cattle crowded down
1154 to get through, they have strung more than five barbed wires; they have strung extra wires, and then they were all loose, showing the cattle had crowded up against them and caused them to be out of repair and in bad shape.

(Stipulated that the witness was employed by the Rindge Company to make these estimates.)

There was no agreement or understanding between me and the Rindge Compnay or between
1155 me and Mrs. Rindge, or any one connected with the Rindge interests, that if this fence had to be built that I would get the contract to build it. I don't know that the woven wire fence would cost any more than the barbed wire fence in that ranch the way I have estimated it, because I have not—I have made it on woven wire. I gave an estimate of three different prices, and I have not figured that out to know whether that fence at those prices would amount to more than the barbed wire would cost. It

might cost more. If it did, there would not be very much difference I don't think.

The Court: Take a lineal foot of wire for fencing, Mr. Otis, what is the difference between the cost of fencing with that five barbed wires and the cost of fencing it with a 26 inch woven wire in height and two barbed wires? A. The difference between a five barbed wire fence and a woven wire 26 inches high, and then say two or three strands above it?

The Court: No, the one you specified. What is the difference between the cost of a foot of that fence and a foot of five barbed wire? A. A five barbed wire fence would be a little cheaper; I couldn't say how much cheaper without figuring it out. I have not figured it out. The wire would be less expensive, but the labor is more expensive. It takes more labor than to put in the woven wire, because you have to go over the ground and string out the fence five times. If anything it would be less labor to put up the same height fence with woven wire than barbed wire.

The Court: Don't you think the additional time that would be consumed in putting up the five different lines would be consumed in straightening out the woven wire so as to properly adjust it? A. I think one would about offset the other. About what you would save in the difference in the cost of wire you would save in the labor. I

don't know exactly about that. The woven wire, where it can be stretched out in long stretches on a straight road—you can stretch 40 rods in a row; that is 660 feet. That can be rolled out and stretched up at one stretch; and then you have the labor putting the barbed wire above. Now if you are stretching out five barbed wires, you have to distribute the five barbed wires and space them on the posts carefully so as to get them spaced about right, and staple each individual wire. Where the wire is put on around the curves like it would be required to put on this job, many miles of it, the woven wire would stand up better than the barbed wire, for the reason that if you start to stretch a barbed wire fence and you stretch one wire and get it tight, and then you start to stretch another wire and a third wire, the first one will begin to get loose because the posts will give a little and you have a poor job; whereas, a woven wire, you pull it up at one time and the strain all comes on at one time like. You can put it up in better shape.

The Court: If you are coming back this afternoon I wish you would make a calculation, if you will, as to the difference in cost per mile of five barbed wire fence and the one that you have specified. A. Yes sir.

Mr. Vallee: The witness stated that he made no estimate on the four barbed wire fence. He may, during the noon hour, give us that.

1162 The Court: Yes, you may do that.

Mr. Newby: We join in that request.

By Mr. Vallee: My estimate included the creosote and creosoting of the posts. About 3 feet of each post I would creosote. That would come about 6 inches above the ground on the line posts. A good many of those posts have to go in on the hillside, and the ground would be high on the high side of the post, and if dirt gets down against the post, it would rot it there. I
1163 think it is well to creosote the posts above the ground level 4 to 6 inches, and that is why I generally creosote them higher than the ground. So I have specified here 4 inches above the ground.

Q. Now, without going into detail, isn't it a fact that only the extraordinary and not the ordinary fence, that the posts are creosoted on a big large cattle ranch such as this—or ranch,
1164 rather? A. I see they are creosoting the posts up on the Malibu Ranch, the posts they are putting in now. I saw a big pile of posts there that were creosoted and tarred; but this is a different thing. It is tar, which is about the same expense. I don't know how much it adds to the life of the post to creosote it or tar it. From what I have seen and know about it, I think it does add to the life of the post to treat it with coal tar. I have seen fences where the posts were tarred that have been in for 20 years and

were in good repair. I have taken notice of that. I have seen fences also where the fences were not tarred that had not rotted out in a number of years. Again, I have noticed that redwood posts where the lumber is cut out of the top of the tree, like lumber will rot away very soon, within a few years, even if they are tarred. I do think that tarring posts adds to the life of them. I think that is a generally accepted fact. I generally, in specifying the work, or specifying the manner of fencing we should build—I almost always creosote the posts. That is what I specify. The owner generally leaves it to me how it should be built, if he does not know how. He relies on my judgment and when he does I specify that the posts shall be creosoted. The posts I have estimated are eight feet long. The posts I saw on the ranch were split posts, seven feet long. They are 4x5, and consequently have more bearing against the ground and do not have to be placed so deep in the ground as a post of smaller diameter. There is a difference in the cost of 4x5x7 than there is a 4x4x8. The post is a foot longer and costs more in proportion. The split posts for fences are generally made four by five, and the sawed lumber we generally use a 4x4 and then we place a post—where we use a 4x4 we put it a little deeper into the ground so it has more resistance against the ground. Most fences of this character only use posts 7 ft. long if they are 4x5. You couldn't build this fence with 7 ft. posts. They would not be long enough. They are using 7 ft. fences there now,

1168 but I explained to you they were split posts 4x5. I estimate the cost of labor, in my estimate of the woven wire fence, $4.50 per day on an eight hour day. I estimate that the men will be on the work actually eight hours. My estimate on the barbed wire fence was on a different basis for the labor. The barbed wire fence I estimated the job from one end to the other; that is straight easy going where the fence would be put in, and it would take less labor—I estimated that that would about even up where there
1169 was a good deal of labor, so I estimated the total expense at about 12 cents a foot; whereas, the woven wire fence I segregated the cost of the fence and divided it into three different estimates and estimated the labor accordingly. In my estimate of the barbed wire fence I include compensation insurance, $16.63. In my estimate of woven wire fence I include no estimate of compensation insurance as there is a good deal more hazard in putting in a barbed wire fence than there is a woven wire fence, and though
1170 we carry insurance on all the workmen too, I simply didn't add it.

The following is a copy of defendant's exhibit 4 which the reporter was instructed to copy into the record:

Estimate on woven wire fence which is to be made up of 4x6 end and corner posts 3 ft. in the ground, well anchored and braced; gate posts 6x6; line posts 4x4 2½ ft. in the ground. This lumber all merchantable rough redwood No. 1. Line posts placed about 16 ft. apart.

1173 1172 1171

WOVEN WIRE:

The woven wire for this fence to be:

1452 6″ stay: American fence with two strands of genuine Glidden barbed wire above to make a 5½ ft. high fence. All the posts to be creosoted from the bottoms up to 4″ above the ground. I estimate it as follows:

330 4x4-8	3520′	
Extra 10 4x4-8	107′	
	3627′ at $39 plus freight and distributing on the job, $51.00	$ 184.98
320 rods woven wire at $1.80		256.
50 lbs. staples at $.07		3.50
Creosote and creosoting 340 posts		34.
2 strands barbed wire 720 lbs. at $.70		50.40
FREIGHT		
Barbed wire, 720 lbs.		
Staples 50 lbs.		
Woven wire 320 rods, 12.7 lbs. to the rod, 4064 lbs.		
Tools, camp equipment, etc., 500 lbs.		
5334 lbs. at $6.00, freight $2.00, distributing per lb.		21.33

1176 1175 1174

LABOR

1 man completes 100 ft. of fence per day, 53 days at $4.50 per day		238.50
		$ 788.71
10% overhead and profit		78.87
	About 7 mi.—	$ 867.58

Estimate of fence for the ground that is rough and where the road is over uneven ground and where the straight stretches are less than 500′.

Level ground		867.58
Extra for above conditions		
20 extra posts 213 ft. at $51.00	10.86	
Tar and tarring	2.	
Extra spikes and nails	1.	13.86

Extra labor

100 ft. 53 days as allowed

In this fence the men will build about 60 ft. a day;

1179	1178	1177
88 days, or 35 extra days labor at $4.50 per day		157.50
		1038.94
	10% overhead and profit	17.13
		1056.07
4½ miles of very rough ground:		
79 extra days at $4.50 per day		345.50
Posts for this fence should be 12 ft. apart, requiring about 117 extra posts.		
Extra braces and blocks, 30 posts:		
147 posts, 1568 feet at $51.00		80.96
Creosote and tarring		14.70
		441.16
	10% overhead and profit	44.11
Extra expense more than to build a fence on level ground, as estimated		867.58
		1352.85

1182 1181 1180

ESTIMATED COST PER MILE OF FENCING PROPOSED COUNTY ROAD THROUGH THE MALIBU RANCH

By A. J. Otis
Los Angeles Fencing Co.

RINDGE COMPANY — Oct. 1st, 1918.

Posts—4" x 5" x 7"—split cedar at 30 cts.			112.00
16⅔ ft. apart—320			
Extra for curves & braces 20—7' at 35 cts.			7.00
Tar and tarring	at 10 cts.		34.00
Wire—5 strands Genuine Glidden, 5 x 5280' (say 5300)—26500'			
26500—(14.20' to llb.) 1860 lbs.			
Staples and spikes 40 1900 at 7 cts.			133.00
Freight—340 posts at 25 lbs. 8500 lbs.			
Wire—	1900 lbs.		
Camp tools, etc., 500 lbs.			
10900 say 5½ tons at 6.00		33.00	
Distributing, etc.		5.00	
			38.00

398

1185 1184 1183

Labor—5280 12 cts. 633.60
Ins.—633.60 at 2.25 16.63

974.23
10% 97.42

Price $1071.65 1071.65

ESTIMATE ON GATES
For Proposed Road Through Malibu Ranch

Rindge Company, Oct. 1st, 1918.

Gates 25.44
Padlock 2.00—3'—3-8 chain 2.35
Tar for posts & braces .30

28.09
Add hog wire .75

28.84

5—2x6 —16=80 O. P.
9—2x6 — 5=45 "

1188	1187	1186
1—4x4 —12=16 " 141 at 39		5.50
1—6x6 —10 R. R. 30		
1—6x6 —16=48 Spikes		.25
2—4x4 — 8=21 ⅔		
2—2x12— 3=12		
4—2x3 — 1 1—2—2 114 at 42		4.78
3 Hinges—90 cts.—Latch 30 cts.—Iron 1.24		2.45
255 ft., weights 3 obs.—765 lbs.		
Irons Freight 35		
	800 lbs.	
800 lbs.		2.40
1— —Labor		6.75
Haul to job		1.00
		23.13
	10%	2.31
		$25.44

NUMBER OF ANGLES IN PROPOSED MALIBU ROAD FROM COUNTY SURVEYORS' MAP
In Complaint
Also Cost Per Offset.

5′	angle	116— 9.91
10′	"	101—10.16
15′	"	49—11.90
20′	"	48—12.37
25′	"	28—13.81
30′	"	49—14.20
35′	"	10—15.89
40	"	6—16.28
45	"	7—18.56
20	"	8—18.95
55	"	3—18.65
60	"	1—18.77
65	"	1—18.91
75	"	2—19.90

429

Los Alisos Canyon Road

Posts 12′ apart
40 extra curves and braces

5′	angles	1
10	"	18
15	"	1
20	"	8
25	"	1
		29

Length 9600

Los Alisos Canyon Road from main road to Beach. Alongside alfalfa field.

10′	angles	2
25	"	1
30	"	1
35	"	1
		5

Length 2400

Number of Offsets and Size of Each

As per County Supervisor's Map of Proposed Malibu Road & Laterals.

5 ft.	10 ft.	15 ft.
4—Los Flores	2—Malibu Pt.	2—Malibu Pt.
6—Wharf	3—Winter Canyon	4—Winter Canyon
1—Malibu Pt.	5—Marie Canyon	2—Marie Mesa
4—Winter Canyon	2—Marie Puerco	2—Marie Puerco
6—Marie Mesa	6—Puerco Flat	2—Puerco Flat
5—Puerco Flat		2—Corral Canyon
3—Marie Canyon	5—Corral Can.	3—Sosto
1—Sosto	1—Sosto	
2—Estcondido	2—Escondido	3—Escondido
3—Ramirez Mesa	1—Marsh	1—Ramirez Mesa
6—Ramirez Canyon	10—Ramirez Mesa	2—Ramirez Canyon
21—Zuma Mesa	23—Zuma Mesa	8—Zuma Mesa
1—Dume Canyon	1—Dume Canyon	1—Dume Canyon
17—Beach	7—Beach	3—Beach
1—Trancas	4—Trancas	4—Trancas
4—Encinal	2—Encinal	2—Encinal
8—Encinal Flat	5—Encinal Flat	2—Encinal Flat

1200	1199	1198
1—Lechuza	1—Bridge Canyon	
4—Los Alisos		
7—Nicholas	1—Nicholas	
2—Mesa	2—Reynolds Camp	
1—Reynolds C.		
6—Sequit	1—Sequit	
1—West Beach	1—West Beach	
25 ft.	30 ft.	
2—Carbon Can.	2—Malibur Pt.	
4—Winter Can.	4—Crossing Malibu Creed	
1—Puerco Flat		
2—Corral Canyon	2—Marie Canyon	
3—Sosto	3—Puerco Flat	
2—Escondido		
2—Marsh	3—Corral Can.	
1—Ramirez Mesa	3—Sosto	
3—Zuma Mesa	4—Escondido	
	1—Ramirez Mesa	
	2—Zuma Mesa	

2—Bridge Canyon
6—Los Alisos
2—Nicholas
2—Little Grand
1—Reynolds Camp
7—Sequit
3—West Beach
2—County Line
20 ft.
2—Winter Canyon
2—Winter Canyon
1—Marie Canyon
1—Puerco Flat
4— " "
3—Corral Canyon
4—Escondido
2—Ramirez Mesa
3—Zuma Mesa

6—Beach

3—Trancas Beach
2—Encinal
2—Encinal Flat
2—Bridge Canyon
2—Los Alisos
2—Nicholas

4—Little Grand
2—Reynolds Camp
1—County Line

35 ft.

2—Puerco Flat
2—Corral Canyon
2—Sosto
1—Escondido
1—Bridge Canyon
1—Los Alisos
1—Zuma

1—Encinal
1—Bridge Can.

1—Los Alisos
1—Nicholas
1—Reynolds Camp
2—Sequit
1—County Line

40 ft.

1—Puerco
1—Marie
1—Puerco Flat
1—Sosto
1—Lechuza

4—Dume Canyon
1—Beach
1—Lechuza
4—Trancas Beach
5—Encinal

4—Los Alisos
1—Nicholas
2—Sequit
1—County Line

45 ft.

1—Marie
1—Puerco
2—Sosto
1—Bridge
1—Reynolds Camp

1206

50 ft.
1—Winter
3—Sosto
1—Bridge
2—Lechuza
1—Nicholas Flat

55 ft.
2—Puerco Flat
1—Reynolds Camp

1205

60 ft.
1—Nicholas Flat

1204

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65 ft.
1—Puerco Canyon

75 ft.
1—Puerco Canyon
1—Corral Canyon

Los Alisos Canyon Road North
Length 9600 ft. (about)

5 ft.	10 ft.	15 ft.	20 ft.	25 ft.
1	18	1	8	1

Los Alisos Canyon Road South to the Beach from the Malibu Main Road.
Length about 2400 ft.

10 ft.	25 ft.	30 ft.	35 ft.
2	1	1	1

Posts 12′ apart, 40 extra for curves & braces.

ESTIMATE BY A. J. OTIS FOR RINDGE CO. JOB.

Oct. 2, 1918.

5 ft. Offsets—Require.....Price .....$ 9.91
1—Rail—1—3x4—5 R. O. P.
2 End Posts 2—4x6—8 =32 R. R.
2 Braces—2—4x4—8 =21 1/3
2—Anchors 2—2x3—1 1/3 = 1-1-3
2 Brace Blocks 2—2 x 12—3=12

71 2-3

72 ft. at 39.00 2.81
Freight $6.00 per ton
Cartage on Job 2.00 per ton

$8.00 " " —1000 ft. 3000 lbs.
3000 lbs. at 8.00 ton—12.00
72'—$12.00 .86
Tarring—2 posts, 2 braces, 2 blocks .60

Staples, spikes, nails,	.20
2′ barb wire	4.50
	9.01
10% overhead & profit	.90
	9.91

10 ft. Offset—Price $9.51

Require same as 5 ft. offset	9.91
Except the rail is 5 ft. longer—5 ft. at	.25
	10.16

15 ft. Offset—Price—$11.12

	Require
2—Rails	2—3x4 —7—14—R. O. P.
2—End Posts	2—4x6 —8—32—R. R.
2—Braces	2—4x4 —8—21-1/3 "
2 Anchors	2—2x3 —3— 1-1/3—1-1/3
2 Brace Blocks.	2—2x12—3—12
1—Line Post	1—4x4 —8—10-2/3
	91-1/3

91–1/3 ft. at 39	3.56
Freight & cartage 91–1/3 ft. at 12	1.10
Tarring 3 posts, 2 braces, 2 brace B	.70
Spikes, nails & Staples	.10
75 ft. barb wire—5–1/4 lb. at 7¢	.36
Labor—9 hrs	5.00
	10.82
Add 10%	1.08
	11.90

20 ft. Offset—Price $12.37.

Require—

2—Rails	2—3x4	—10—	20—	R. O. P.
2 End Posts	2—4x6	— 8—	32—	R. R.
2 Braces	2—4x4	— 8—	2–1/3	"
1—Line Post	1—4x4	— 8—	10–2/3	"
2 Anchors	2—2x3	— 3—	1–1/3	"
2 Brace Block	2 2—2x12	— 3—	12	

97–1/3 at 39

Frt. & Distributing 12—51—	4.96
Tarring 3 posts, 2 braces, 2 blocks	.70
Spikes, nails & staples	.10
100 ft. Barb wire—(14.30)—7 lb. at 7¢	.49
Labor—9 hrs	5.00
	11.25
10%	1.12
	12.37

25 ft. Offset—Price—$14.14

3 Rails	3—3x4	—8—	24	R. O. P.
2—End Posts	2—4x6	—8—	32	R. R.
2 Braces	2—4x4	—8—	21-1/3	"
2—Line Posts	2—4x4	—8—	21-1/3	"
2—Anchors	2—2x3	—1-1/3	1-1/3	"
2—Brace Blocks	2—2x12	—3—	12	

112—39

1221	1220	1219
Freight & Ctg. at 12	12	
	51	
Tarring 8 posts & blocks		5.71
Spikes, staples & nails		.80
125 ft. Barb Wire—9 lbs. at 7		.10
Labor 1–1/4 days at $4.50		.63
		5.62
		12.86
	10%	1.28
		14.14

30 ft. Offset—Price $14.50
Same as 25 ft.....$14.14
Add 5 ft. Rail..... .25
2 lb. Barb Wire..... .14
$14.53

35 ft. Offset—Price—$15.90
4—Rails .....4—3x4 —9—36 R. O. P.

1224 1223 1222

2—End Posts ....2—4x6 —8—32 R. R.
2—Braces .....2—4x4 —8—21-1/3 R. R.
3—Line Posts....3—4x4 —8—32 "
2—Anchors ....."—2x3 —1-1/3—1-1/3 "
2—Brace Blocks—2—2x12—3—12

134-2/3

135′ at 51	$ 6.88
Tarring 9 posts & blocks	.90
Spikes, staples & nails	.14
175—Barb Wire—13 lb. at 7¢	.91
Labor—1-1/4 day	5.62
	$14.45
10%	1.44
	$15.89

40 ft. Offset—Price—$16.28

Same as 35 ft	$15.89
Add 5 ft. rail	.25
Add 2 lb. Barb Wire	.14
	$16.28

45 ft. Offset—Price—$18.56

5—Rails—	5—3x4—9	45 R. O. P.
2—End Posts	2—4x6—8	32 R. R.
2—Braces	2	
4—Posts—	5—4x4—8	64
2—Anchors		1–1/3
2—Brace Blocks		12
	154 at 51	7.86
Tarring 10 posts & blocks		1.00
Staples, spikes, nails		.14

1280	1229	1228
16 lbs. Barb Wire....at 7¢		1.12
Labor—1-1/2 day		6.75
		16.87
	10%	1.687
		18.557

50 ft. Offset....Price $18.95

Same as 45	$18.56
Add—5 ft. Rail	.25
Add—2 lbs. barb wire	.14
	$18.95

55 ft. Offset—Price $18.63

2—End Posts	2—4x6 —8	32
4—Braces		
4—Line Posts	8—4x4 —8	85-1/3
2—Anchors		1-1/3
4—Brace Blocks—	4—2x12—3	24
	143	at 51— 7.29

	1233	1232	1231
Tarring 4 Braces, 4 Blocks, 6 Posts	at 10¢		1.40
Spikes & Staples			.10
55 ft. x 5—20 lb.	at 7@		1.40
Labor—1-1/4 day			6.75
			16.94
	10%		1.69
			18.63

60 ft. Offset....Price $18.77
Same as 55 ft.....$18.63
Add 2 lb. Barb Wire..... .14
$18.77

65 ft. Offset—Price $18.91
Same as 55.....$18.63
Add 4 lb. Barb Wire..... .28
$18.91

1236		1235	1234
75 ft. Offset....Price $19.90			
2—End	2—4x5—8.... 32		
4—Braces			
5—Line Posts—	9—4x4—8.... 96		
4—Brace Blocks	24		
2—Anchors—	1–1/3		
	153 at 51		7.80
Tarring 15 Posts & Blocks			1.50
Spikes and Staples 2 lb			.14
75 x 5—375 ft. Barb Wire—27 at 7¢			1.89
Labor—1½ day—			6.75
			18.08
		10%	1.80
			19.88

1237 Afternoon Session, 2 o'clock P. M.
(Jury all present and in the box.)

ALBERT J. OTIS,

recalled.

By Mr. Newby: I made the calculation requested by court and counsel during intermission.

Q. I will first ask you then to state the difference in cost between a fence constructed of
1238 five strands of barbed wire and such fence as you specified this morning, per mile. A. I estimated it would make a difference, on the level ground of barbed wire of about $22.00—I am not able to submit that without I find that paper. I put it away very securely. I started from the office with it. I haven't got that information with me, but I will get it.

Cross-Examination

1239 By Mr. Vallee:

In my estimate I did not figure any discount on carload lots of wire up there. I find in contracting that we generally have enough things we don't figure in to make up for all the discounts that we gain by getting it in carload lots or otherwise. That is on the woven wire; there is a discount on all this wire. The difference between what we pay for the material and what I have estimated at here is our profit on the material. We get a discount on all the materials

1240 that we buy in quantity; the price that I figured here for the material is what I consider a fair price to sell the material for this job. I have, of course, taken into consideration that it is a large job. I mean by that that in making up this estimate and placing a figure on what is used in the job, I have taken into consideration the discount, and allowed discount—instead of a lump sum at the end, I have allowed it in
1241 figuring the particular items used.

Q. Now, you made a statement this morning about constructing a fence upon the Rindge Ranch at the present time. Do you know what kind of a fence that is? A. That I saw there that is being constructed: I spoke of having seen a fence that was lately constructed. I saw a fence which they had recently constructed on the ranch; I also saw a pile of fence posts there that had apparently just been dipped in coal tar,
1242 that is all I saw. The fence had five barbed wires and 7 foot posts. I don't know anything about how much it is costing the Rindge Company at the present time to put up that fence. I think that the fence—well now, I don't know what kind of help they are using, what they are paying for wages, or what they are paying for the material, so I couldn't hardly say what is the cost of that fence—if it is old material—I don't know anything about the material, I saw

1243 the material there, the posts seemed to be fairly new, they were not weather stained very much; it seemed that they had not been there very long; they were not weather stained. That is all I know about it.

The Court: Where was that fence, Mr. Otis? A. Well, we had been pretty well up to the other end of the ranch, as I remember it, it was down before we got to the hog place, before we
1244 got to where they are raising hogs.

The Court: That is not up in the other end of the ranch. A. I speak of that because we drove through.

The Court: Was it this side of the hogs? A. That is my remembrance, but I could not state positively where the fence was; the ranch is 21 miles long and we rode up in a machine and back.

By Mr. Vallee:

1245 Q. Isn't $500 a mile a fair estimate of the fence which they are constructing at the present time there? A. The fence I saw there that is being built is a straight fence and would not require extra material or extra labor as a fence would cost on this road, and could be possibly be built for $500 a mile; but that would be a lower estimate than I would consider a fair price for a man or a concern to go and build a fence. My estimate has included a price of building the fence on straight even stretches,

1246 and also the price of building a fence where it is difficult, around the curves and in the ravines, and also about four miles and a half where it would have to be built on what I would call in the mountains, which requires a great deal of extra labor and some extra material. I think that my estimate on the woven wire fence that I have specified to be built at the present time, from one end of that ranch to the other, and be done in a thorough and workmanlike manner,
1247 that would be acceptable to the owners, or anyone else paying the price for the fence—I think my price is a fair, reasonable price.

Q. You said this morning that it was much more difficult to stretch the barbed wire fence than it was to stretch a woven wire fence? Isn't it a fact that when a barbed wire fence is stretched on the level, the wagon usually goes along with the three wires, stretching out from
1248 behind, and those wires are pulled tight to the fence posts, and the three wires are stapled at the same time by the same man—I mean the three wires are up, and a man staples the one at the top and then the one at the bottom, or which ever way it is done. Is that a fact? A. No sir, I don't think it is. In a measure you are right. Where that ground is level and nothing in the way, it is possible to put three wires of barbed wire, possibly four, on an iron rod and let the wires unroll from the back end of the

1249 wagon and so save labor. Then afterwards go and stretch the barbed wire up one strand at a time. But that does not continue only where the ground is even, and where the fence is in straight lines of a quarter of a mile or more. If the fence is around in angles and a difficult place to build, your plan would not work out.

Q. Going around angles and curves, don't they have another arrangement by which the wire turns off, where it stands up straight and
1250 the wire just turns off as it goes along? A. I would say that there are a good many different ways of unrolling barbed wire. I don't just understand the point you are trying to make.

Redirect Examination

By Mr. Newby:

This particular fence that I was speaking about last on the Rindge Ranch that I saw was a division fence on the ranch there. I think it
1251 was just this side of Zuma Canyon where the hog ranch is. I am not positive. That is the fence I am talking about; that was a five strand barbed wire fence; 4x5 redwood posts, which I presume to be 7 ft. long.

Q. Well, in your estimate given to counsel as to the probable cost of such a fence, did you make any allowance for the purchase of materials at other times, or did you fix that present price of labor and material? A. At the present time.

1252 Q. Why did you differentiate between the price of that particular fence which you saw and the estimate which you have given? A. Will you be kind enough to say that over again?

Q. Read the question.

(Last question read.)

Q. As to the cost per mile. A. As to the fence that I saw, the fence that I estimated? I think it is about the same fence.

1253 Q. What makes the difference in price? Possibly I have not made myself clear. Now, in your first estimate of about seven miles you put an average cost of the woven wire fence at $867.58? A. Yes sir.

Q. Now somewhere you testified on direct examination as to the cost of a mile of fence made of five strand of barbed wire. What was that estimate? A. That is five strand barbed wire fence from one end of the ranch to the

1254 other.

Q. What was the price? A. $1000 a mile and something.

The Court: $1071.65.

Q. What was the reason for making the average price throughout the ranch $1071.65 per mile, that you have, when this five strand wire fence that you saw on the Malibu Ranch could be built for $500. A. Did I say it could be built for $500.

Q. I so understood you; what did you say?

1255 A. I said that my estimate of building a fence around the proposed right of way for the county road, where it had to be built up and down the hills and around the ravines and up in the canyons and up on the mountains, that my estimate on that fence, building it from end to end would be about a thousand dollars a mile—$1071.65. Now it would be possible to put in a mile of fence on a straight line, on level ground, and
1256 the conditions favorable, for very much less.

Q. Do you think it could be put in for one-half less? A. I haven't formed an estimate that way. I don't like to guess at it.

Q. In your opinion what could the fence that you saw on the Rindge ranch just east of Zuma Canyon be built for at the present time? A. I would think it would be worth, to build it there, from $550 to $600 a mile.

Q. In your opinion, would it be worth the
1257 difference between that and the $1071 per mile to build it the entire distance of the road? A. Yes sir.

Q. Is that due to the angles and curves that you have designated, and elevations? A. Yes sir, and the mountainous ground—that that part of the road would be built over. I stated on my direct examination that where there are curves it would require more posts. I made an estimate of that. I would like to state that on four and a half miles of the fence—22 or 23

1258 miles, I estimated, and on about 4¼ miles of fence, I put the posts at 12 feet apart, whereas on the rest it was put 16 feet apart. Now, to put posts 12 feet apart requires more labor and naturally more material. I think that the extra labor and material would make up the difference in the price, bring it up to this figure. There is one place where the county proposes to run the fence—or rather run the road up through some canyons and where the road would
1259 go through some very beautiful timber land, along the edge of the mountain, and give it a scenic feature, and the view; and that extends for about 2½ miles, as I understand it, and also, there is a branch road which runs down the beach, and then up some 900 feet,—altogether about 2,000 feet of canyon and that two miles with the other 2½ miles makes about 4½ miles of very difficult ground to build fence on.
1260 I state upon cross-examination that I estimated as a part of the cost of the barbed wire fence, compensation insurance, but I did not on the other. That was an inadvertence. I should have added that to the estimate of the woven wire fence. That would increase it by that much.

Recross-Examination

By Mr. Vallee:

My estimate is for so much per mile to build the fence, in the first place, a woven wire fence

with two barbed wires running along the top, and another estimate of a five barbed wire fence. The barbed wire fence estimate does not include any woven wire at the bottom at all. I have given no estimate of a 26 inch hog-tight sheep fence. That is a fence constructed for the sole purpose of turning sheep, hogs and also grown cattle; but the woven wire fence I have specified would cover the term. The fence I have specified, I think, is a fence that would be particularly practicable for that place, because in raising stock, as I stated this forenoon, they might want to turn the hogs into different fields, or the sheep into different fields, or they may have young stock or horses or even goats. A ranch that is being used for the purpose of raising stock would need a fence that is higher, would need a fence that would be higher than simply a hog fence, a woven wire fence with barbed wire above. What we call a hog fence is a fence that is built especially for hogs, hogs and cattle, and is a fence 26 inches high with barbed wire above, but that is not a practical fence for sheep and young cattle, because the fence is not high enough.

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Redirect Examination

By Mr. Newby:

Q. There are two questions I want to ask you. Can you give an estimate as to the probable life of such a fence as you have testified

1264 to here this morning, woven wire, and the two strands of barbed wire above that, how long would it last under ordinary conditions such as you saw on the ranch? A. Well, I would be—to answer that question, I would have to say that I have been building fences now for 12 years—11 years here in Los Angeles I think; and the first fences I built here with wooden posts are very fair. In some places some of the
1265 line posts have rotted. I think that a fence like this is good for 15 or 20 years. It would have to be repaired from time to time. When the posts would rot out, they would have to be replaced. There would be maintenance charges I might state that on my father's place, where I was raised, the fences there that were put in there when I was a boy going to school are being used yet. They have had to replace the fence posts in places. I would also say that
1266 along the coast the barbed wire rots out very quick because the action of the salt air causes it to deteriorate and rust, so it becomes worn out very much faster than material which is not on the ocean. I would say that if the barbed wire lasted—I noticed barbed wire down along the coast rots out much faster. In my opinion it would last five to eight years. I am hardly competent to give testimony on that. The condition of the woven wire would be about the same as the barbed wire, because this galvaniz-

1267 ing is put on the steel wires that make it last, and the woven wire is galvanized in the same process or about the same process as the barbed wire. As to the relative life of a fence constructed entirely of barbed wire and the combined woven and barbed wire, as compared with the barbed wire, I would say that it would be—that a woven wire fence would last longer, because there are more wires; they are closer to-
1268 gether. Now, take a barbed wire fence and let the barbed wires be a foot apart, say 5 foot high and 5 barbed wires, if one of the barbed wires becomes rusted in a few years and subject to strain, the cattle might get through it. If they would break one wire or two wires, then the fence is practically ruined at that place, whereas woven wire, having more wires, should stand up longer. I specified in my estimate wire of the same grade. I specified there a 1452 Amer-
1269 ican fence. That fence is made by the United States Steel Corporation, and I consider as good as any woven wire that is manufactured. That is one of the standard makes. It is the United States Steel Corporation products. They make quantities of woven wire. They are the largest manufacturers we have.

1270 ROBERT JONES,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My name is Robert Jones. I live at Highland Park. My official position in this county is acting county surveyor. I have in my possession and with me a report of an estimate made in
1271 1916 for the building of a 22-foot road along the right of way of this proposed Malibu Road. (Witness hands paper to counsel.) This is an official record, and it was made in connection with the proposed road to be constructed along the line in question in these proceedings. It was an estimate made as to the cost of a 22-foot road along the line of this survey. The survey as shown on the map filed in this case, along the center line, described in the complaint in this
1272 case.

Mr. Vallee: That is simply for the Malibu Road.

Mr. Anderson: I understand that; of course the other roads were not in existence at that time. Now, if the court please, I would like to offer this estimate. It is an official document and cannot be left here, but I would like to have it—you haven't got an extra copy of it, have you?

The Witness: No.

1273 Mr. Anderson: I think for the purpose of the record it would be enough to read in the totals and then have it understood that it can be produced for reference at any time during the trial and have it further understood that it can be copied into the record.

Mr. Burnell: I think we could stipulate that it is an estimate prepared by the county surveyor at the direction of the board of supervisors.

1274 Mr. Anderson: (Reading.) Malibu Road from east line, Malibu Ranch to west line, Los Angeles, county, estimated cost of constructing a twenty-two foot road-bed along the line shown on county supervisor's map No. 8070, sheets 1 to 4. Now you are familiar with the complaint on file on this case? A. Yes sir.

Q. Map No. 8070 is the map filed as an exhibit filed in that complaint? A. I don't know what the exhibit number is but it is filed with

1275 the complaint.

Q. It is the map annexed to the complaint? A. Yes sir.

Q. "This estimate was made in 1916, based on prices as they existed at that time." I will ask you if it is not a fact that the various matters contained in this are all contained on the summary on the last page? A. That is correct.

1276 Q. In other words the last page is a general summing up of the various matters that have appeared on the preceding pages? A. Yes sir.

Mr. Anderson: Then if the court pleases, for the purpose of this reading at this time, it is only necessary to read the summary. The summary shows: "Cubic yards of excavation and cost of excavation. Total cubic yards of excavation 287,912 cubic yards. Estimated cost
1277 of excavation 73,462.50. Estimated cost of pipes, $25,364.40; estimated cost of head walls, $1,571; estimated cost of bridges, $85,350; estimated cost of guard fences, $2,880. Total cost, $188,627.90."

Q. Now, Mr. Jones, what is meant by "guard fences?" A. That is the fence that is built along the edge of the road to keep the machines from running off. That has nothing to do with the fencing you have been talking about
1278 here today, that is, the fence for the purpose of keeping the stock off the road, right of way fences. It has nothing to do with that. This estimate is simply an estimate to bring the roadbed to grade. It does not include the paving, simply making a surface road with the native dirt of the country.

Mr. Anderson: You may cross-examine.

The document referred to was marked defendant's exhibit 5 for identification only, and is in words and figures as follows, to-wit:

COUNTY SURVEYOR'S FILE COPY

MALIBU ROAD

From East Line of Malibu Ranch to West Line of Los Angeles County.

ESTIMATED COST

of

Constructing a 10 Foot Road Bed Within the Proposed Right of Way Shown on County Surveyor's Map No. 8070, Sheets 1 to 4.

NOTE: This estimate was made in 1916 and was based on prices as they existed at that time.

Location	Description	Total Cost
Mile 1	From Las Flores Canyon follow present traveled road, where same is within the limits of proposed right of way as shown on county surveyor's map No. 8070, sheets 1 to 4. Where present road is not within said right of way, it can in most cases be changed to within same by changing direction of travel. From Station 24+00 to 31+00 make excavation sufficient to make roadway over sand from Station 31+00 to Station 36+00. Also from Station 42+00 to Station 46+00 make fill over sand. Estimated cost of work	$125.00

Mile 2	Present road (may be used)					
Mile 3	From Station 138+00 to Station 140+00 road should be cut back into bank a short distance to keep travel within proposed right of way. From Station 143+00 to Station 154+00 present surface should be ploughed and scraped sufficiently to make it passable. Estimated cost of work					150.00
Location	Description				Amount	Total Cost
Mile 4	From Station 157+00 to 194+50 surface should be ploughed and scraped sufficiently to make passable. Estimated cost				$200.00	
	From Station 200+00 west, road will have to be constructed over new location. 775 cu. yds. Excavation at .25c				193.75	
	PIPES					
	Sta.	Size	Length	Cost per ft.	Total Cost	
	205+40	24"	40'	2.90	116.00	116.00 509.75

Mile 5 — 7429 cu. yds. Excavation at .25c — $1857.25

PIPES

Sta.	Size	Length	Cost per ft.	Total Cost		
227+30	30″	30′	3.50	105.00		
240+10 (2-60″)	60″	180′	8.90	1602.00		
260+90	60″	140′	8.90	1240.00	2953.00	4810.25

Mile 6 — 6478 cu. yds. Excavation at .25c — 1619.50

PIPES

Sta.	Size	Length	Cost per ft.	Total Cost		
299+50	60″	130′	8.90	1157.00		
312+65	36″	100′	5.50	550.00	1707.00	3326.50

Mile 7 — 9518 cu. yds. Excavation at .25c — 2379.50

PIPES

Sta.	Size	Length	Cost per ft.	Total Cost		
319+70	30″	110′	3.50	385.00		
353+42	18″	30′	1.90	57.00	442.00	2821.50

Mile 8	14270 cu. yds. Excavation at .25c				3567.50	3567.50
Mile 9	12273 cu. yds. Excavation at .25c				3068.25	
	PIPES					
	Sta.	Size	Length	Cost per ft.	Total Cost	
	20+00	30″	50′	3.50	175.00	175.00
						3243.25

Location	Description				Amount	Total Cost
Mile 10	2655 cu. yds. Excavation at .25c				663.75	
	PIPES					
	Sta.	Size	Length	Cost per ft.	Total Cost	
	84+90	30″	70′	3.50	245.00	
	96+90	30″	60′	3.50	210.00	455.00
						1118.75
Mile 11	2303 cu. yds. Excavation at .25c				575.75	575.75

Mile 12	1478 cu. yds. excavation at .25c					369.50	
	PIPES						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	73+65	60″	50′	8.90	445.00		
	97+35	24″	30′	2.90	87.00	532.00	901.50
Mile 13	1959 cu. yds. Excavation at .25c					489.75	489.75
Mile 14	1048 cu. yds. Excavation at .25c					262.00	262.00
Mile 15	2347 cu. yds. Excavation at .25c					586.75	586.75
Mile 16	1116 cu. yds. Excavation at .25c					279.00	
	PIPES						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	22+00	60″	100′	8.90	890.00	890.00	1169.00

1296 1295 1294

Mile 17	1864 cu. yds. Excavation at .25c					466.00	
	PIPES						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	85+30	24"	90'	2.90	261.00	261.00	727.00
Mile 18	2961 cu. yds. Excavation at .25c					740.25	740.25
Mile 19	3278 cu. yds. Excavation at .25c					819.50	
	PIPES						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	183+25	24"	80'	2.90	232.00	232.00	
	147+50 Temporary Bridge, (In Los Alisos Canyon)					500.00	1551.50

Location	Description	Amount	Total Cost
Mile 20	3139 cu. yds. Excavation at .25c	$784.75	784.75

Mile 21	1476 cu. yds. Excavation at .25c					369.00	
	PIPES						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	246+80	36″	60′	3.90	234.00	234.00	603.00
Mile to 21.18	556 cu. yds. Excavation at .25c					139.00	139.00

SUMMARY

Mile	Div.	Cu. Yds. Excavation	Est. Cost Excavation	Est. Cost Pipe	Total Cost	Accumulative Cost not including Engineering
1	1		125.00		125.00	125.00
2	1					125.00
3	1		150.00		150.00	275.00
4	1	775+	393.75	116.00	509.75	784.75
5	1	7429	1,857.25	2953.00	4810.25	5595.00
6	1	6478	1,619.50	1707.00	3326.50	8921.50
7	1	9518	2,379.50	442.00	2821.50	11743.00
8	½	14270	3,567.50		3567.50	15310.50

			1302		1301	1300
9	2	12273	3,068.25	175.00	3243.25	18553.75
10	⅔	2655	663.75	455.00	1118.75	19672.50
11	3	2303	575.75		575.75	20248.25
12	3	1478	369.50	532.00	901.50	21149.75
13	¾	1959	489.75		489.75	21639.50
14	4/5	1048	262.00		262.00	21901.50
15	5/6	2347	586.75		586.75	22488.25
16	6/7	1116	279.00	890.00	1169.00	23657.25
17	7	1864	466.00	261.00	727.00	24384.25
18	7	2961	740.25		740.25	25124.50
19	7	3278	819.50	732.00	1551.50	26676.00
20	7	3139	784.75		784.75	27460.75
21	7/8	1476	369.00	234.00	603.00	27063.75
21.18	8	556	139.00		139.00	28202.75
Total		76923	$19705.75	$8,497.00	$28202.75	
Engineering & contingencies, (Approx.) 10%					2797.25	
				Total Estimate	$31000.00	

MALIBU ROAD
From East Line Malibu Ranch to West Line of Los Angeles County

ESTIMATED COST
of
Constructing a 22 Foot Road Bed Along Alignment Shown on County Surveyor's Map No. 8070, Sheets 1 to 4.

NOTE: This estimate was made in 1916 and was based on prices as they existed at that time.

EARTH WORK.

Mile 1.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
2+40	8+40	600	100	100	.27	27.00	
13+60	26+60	1300	800	200	.35	70.00	
40+80	68+80	2800	2300	100	.54	54.00	
46+40	68+40	2200	1700	100	.46	46.00	
47+00	53+00	600	100	200	.27	54.00	
			Free Haul	4766	.25	1191.50	
			Total	5466		1442.50	$1442.50

1308 1307 1306

CORRUGATED IRON PIPES.

Sta.	Size	Length	Cost per ft. in place	Cost	Headwall	
9+00	18″	32′	1.90	60.80	4.00	
20+00	18″	32′	1.90	60.80	4.00	
27+00	18″	36′	1.90	68.40	4.00	
32+00	18″	34′	1.90	64.60	4.00	
44+00	18″	30′	1.90	57.00	4.00	
			Total	311.60	20.00	331.60

BRIDGES.

0+40+	40′ Pile Trestle	20.00	800.00	
39+50	40′ Pile Trestle	20.00	800.00	
	Total		1600.00	1600.00
		Total		$3374.10

(Design)

1811 1810 1809

Mile 2.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
58+00	65+00	700	200	500	.28	140.00	
80+00	92+00	1200	700	600	.34	204.00	
			Free Haul	3165	.25	791.25	
			Total	4265		1135.25	$1135.25

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
53+00	18″	32′	1.90	60.80	4.00	
67+00	18″	34′	1.90	64.60	4.00	
80+00	18″	34′	1.90	64.60	4.00	
88+00	18″	34′	1.90	64.60	4.00	
98+00	18″	34′	1.90	64.60	4.00	
				319.20	20.00	339.20
				Total		$1474.45

1314 1318 1312

Mile 3.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
110+00	117+00	700	200	450	.28	126.00	
138+00	147+00	900	400	2300	.30	690.00	
137+00	157+00	2000	1500	1800	.44	792.00	
			Free Haul	4882	.25	1220.50	
			Total	9432		2828.50	2828.50

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
111+00	18"	32'	1.90	60.80	4.00	
117+10+	36"	38'	3.90	148.20	26.00	
121+20	18"	38'	1.90	72.20	4.00	
130+00	18"	34'	1.90	64.60	4.00	
142+50	18"	38'	1.90	72.20	4.00	
			Total	418.00	42.00	460.00

1317 1316 1315

BRIDGES.

151+00	Malibu Creek, 600'+	Pile and Cylinder Piers.		
		Trestle	15,000.00	15,000.00
		Total		18288.50

(Design)

Mile 4.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
174+00	191+00	1700	1200	2000	.40	800.00	
			Free Haul	7432	.25	1858.00	
			Total	9432		2658.00	$2658.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
185+50	18"	38'	1.90	72.20	4.00	
194+80	36"	56'	3.90	218.40	26.00	
205+40	24"	54'	2.90	156.60	9.00	
210+00	18"	50'	1.90	95.00	4.00	
			Total	542.20	43.00	585.20

1820 1819 1818

Total $3243.20

Mile 5.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
218+00	225+00	700	200	200	.28	56.00	
234+00	240+00	600	100	200	.27	54.00	
			Free Haul	18930	.25	4732.50	
			Total	19330		4842.50	4842.50

GUARD FENCING.

Sta.	Lin. Ft.	Left	Right			
226+50		130				
227+20			70			
235+60		40				
236+30		230				
239+60		100	120			
258+50		250	100			
		750	290	Total 1040 Lin. Ft. at .30¢		312.

1923 1922 1921

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
218+80	18″	28′	1.90	53.20	4.00	
227+30+	30″	80′	3.50	280.00	16.00	
240+10	60″	260′	8.90	2314.00	122.00	
244+10	24″	90′	2.90	261.00	9.00	
249+20	24″	80′	2.90	232.00	9.00	
256+00	18″	30′	1.90	57.00	4.00	
260+90	60″	300′	8.90	2670.00	122.00	
264+00	18″	38′	1.90	72.20	4.00	
			Total	5939.40	290.00	6229.40
					Total	$11383.90

Mile 6

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
276—00	288+00	1200	700	100	.34	34.00	
292—00	299+00	700	200	800	.28	224.00	
			Free Haul	14012	.25	3503.00	
			Total	14912		3761.00	$3761.00

Guard Fencing.

Sta.	Linear Feet. Left	Right		
299+00	80	80		
312+00	100	100		
	180	180	Total 360 Linear Feet at .30¢	108.00

Pipes.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
270+00	18″	28′	1.90	53.20	4.00	
299+50	60″	180′	8.90	1602.00	60.00	
307+00	18″	90′	1.90	171.00	4.00	
312+65	36″	140′	3.90	546.00	25.00	
			Total	2372.20	93.00	2465.20
					Total	$ 6334.20

1829 1828 1827

Mile 7

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
340+00	347+00	700	200	500	.28	140.00	
362+00	372+00	1000	500	2500	.31	775.00	
			Free Haul	30533	.25	7633.25	
			Total	33533		8548.25	$8548.25

GUARD FENCING.

Sta.	Linear Feet Left	Right			
319+30	110	80			
332+00	350	90			
344+30	150				
349+00	140				
363+00	130				
	880	170	Total 1050 Linear feet at .30¢		315.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
319+70	30″	140′	3.50	490.00	15.00	
323+00	18″	28′	1.90	53.20	4.00	
332+00	18″	40′	1.90	76.00	4.00	
344+30	18″	26′	1.90	49.40	4.00	
349+90	24″	60′	2.90	174.00	9.00	
353+42	18″	50′	1.90	95.00	4.00	
359+40	24″	60′	2.90	174.00	9.00	
365+80	18″	50′	1.90	95.00	4.00	
			Total	1206.60	53.00	1259.60
						$10122.85

BRIDGES.

Sta.		
336+50	Corral Canyon (H. E. Warrington, Estimate)	13600.00
	Total	$23722.85

(Design)

1 Standard 38′ Wooden Deck Truss.
4 do 19′ Trestle Spans.
2 Concrete Piers.
2 Wooden Piers, with posts set in concrete.
Wooden Bulkhead and Wings, with posts set in concrete.

Mile 8 From Sta.	To Sta.	Dist.	Earth Work. Overhaul / Free Haul	Cu. yds.	Rate	Cost	Total
			Free Haul	37824	.25	9456.00	$9456.00

Guard Fencing.

Sta.	Linear Feet Left	Right		
371+00	100	100		
385+00		250		
398+00		200		
412+00		100		
	100	650	Total 750 Linear Feet at .30¢	225.00

1338 1337 1336

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
379+40	18″	30′	1.90	57.00	5.00	
384+40	18″	30′	1.90	57.00	5.00	
390+50	18″	30′	1.90	57.00	5.00	
397+20	24″	60′	2.90	174.00	10.00	
404+30	24″	80′	2.90	232.00	10.00	
407+00	24″	70′	2.90	203.00	10.00	
410+00	18″	30′	1.90	57.00	5.00	
			Total	837.00	50.00	887.00
						10568.00

BRIDGES.

Sta.		
372+00	Solstice Canyon, (H. E. Warrington, Estimate)	15100.00
	Total	$25668.00

(Design)

2 Standard 50′ Deck Trusses
2 do 19′ Wooden Trestle Spans.
3 Concrete piers.
Wooden Bulkheads and Wings, with posts set in concrete.

Mile 9.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
7+80	14+80	700	200	200	.28	56.00	
16+00	22+00	600	100	500	.26	130.00	
37+00	48+00	1100	600	900	.33	297.00	
39+00	47+00	800	300	2800	.29	812.00	
			Free Haul	39924	.25	9981.00	
			Total	44324		11276.00	$11276.00

GUARD FENCING.

Sta.	Linear Feet Left	Right
20+00	150	100
22+00	200	

		1344		1343	1342
34+00	40	50			
35+00		60			
47+00		150			
	390	360	Total Linear feet 750 at .30¢		225.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
12+65	30″	50′	3.50	175.00	15.00	
20+00	30″	80′	3.50	280.00	15.00	
33+70	30″	60′	3.50	210.00	15.00	
35+50	24″	130′	2.90	377.00	10.00	
43+60	30″	100′	3.50	350.00	15.00	
46+80	36″	80′	3.90	312.00	25.00	
55+75	24″	80′	2.90	232.00	10.00	
			Total	1936.00	105.00	2041.00
						13542.00

BRIDGES

Sta.				
20+00	Latigo Canyon, Cattle Pass		500.00	
48+65+	Escondido Canyon (H. E. Warrington,) Estimate		14000.00	14500.00
		Total		$28042.00

(Design)

2 Standard 50′ Wooden Deck Trusses.
2 do 19′ Trestle Spans.
3 Concrete Piers.
Wooden bulkheads and Wings, with posts set in concrete.

Mile 10 — EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
79+00	85+00	600	100	250	.27	67.50	
97+00	103+00	600	100	400	.27	108.00	
			Free Haul	15899	.25	3974.75	
			Total	16549		4150.25	4150.25

1350 1349 1348

Guard Fencing.

Sta.	Linear Feet Left	Linear Feet Right		
70+00	120	120		
85+00	130	130		
96+00	80	100		
106+00		80		
	330	430	Total 760 Linear feet at .30¢	228.00

Pipes.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
61+00	18″	30′	1.90	57.00	5.00	
70+25	18″	130′	1.90	247.00	5.00	
79+60	18″	60′	1.90	114.00	5.00	
84+90	30″	90′	3.50	315.00	15.00	
96+90	30″	100′	3.50	350.00	15.00	
97+90	18″	50′	1.90	95.00	5.00	
106+30	18″	120′	1.90	228.00	5.00	
			Total	1406.00	55.00	1461.00
					Total	$ 5839.25

454

1853 1852 1851

Mile 11.

EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul / Free Haul	Cu. yds.	Rate	Cost	Total
			Free Haul	7320	.25	1830.00	$1830.00

GUARD FENCING

Sta.	Linear Feet Left	Right					
20+00	300						
28+00		150					
31+00	200						
	500	150	Total 650 Linear feet at .30¢				195.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall
8+85	18″	60′	1.90	114.00	5.00
20+50	18″	30′	1.90	57.00	5.00
33+50	18″	30′	1.90	57.00	5.00

				1856	1855	1854
45+00	18″	30′	1.90	57.00	5.00	
52+80	30″	36′	3.50	126.00	15.00	
				411.00	35.00	446.00

BRIDGES.

Sta. 28+75 Ramirez Canyon (H. E. Warrington, Estimate) 3600.00

Total $ 6071.00

(Design)

3 Standard 38′ Wooden Trusses.
Wooden Bulkheads and Wings, with posts set in concrete.
Wooden Piers, with posts set in concrete.

Mile 12 EARTH WORK.

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
128+00	136+00	800	300	100	.29	29.00	
			Free Haul	6415	.25	1603.75	
			Total	6515		1632.75	$1632.75

1859 1858 1857

Guard Fencing.

Sta.	Linear Feet Left	Linear Feet Right		
73+00	100	100		
78+00		200		
97+00		100		
	100	400	Total 500 Linear feet at .30¢	150.00

Pipes.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
64+00	24″	30′	2.90	87.00	10.00	
73+65	60″	90′	8.90	801.00	60.00	
83+00	18″	30′	1.90	57.00	5.00	
97+35	24″	56′	2.90	162.40	10.00	
103+40	18″	44′	1.90	83.60	5.00	
			Total	1191.00	90.00	1281.00
					Total	$ 3063.75

1362 1361 1360

Mile 13

From Sta.	To Sta.	Dist.	Earth Work		Rate	Cost	Total
			Overhaul	Cu. yds.			
			Free Haul	10251	.25	2562.75	$2562.75

Guard Fencing

Sta.	Linear Feet Left	Right				
133+00		200				
139+00	200					
	200	200	Total 400 Linear feet at .30¢			120.00

Pipes.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
115+00	18″	30′	1.90	57.00	5.00	
119+15	24″	60′	2.90	174.00	10.00	
129+90	24″	40′	2.90	116.00	10.00	
140+00	48″	100′	5.60	560.00	70.00	
11+00	18″	40′	1.90	76.00	5.00	
13+20	18″	44′	1.90	83.60	5.00	
			Total	1066.60	105.00	1171.60

458

1365 1364 1363

BRIDGES.

Sta.		
3+00 to 4+50 Dume (Zuma) Canyon. 160′ of Pile Trestle at $25.00		4000.00
	Total	$ 7854.35

EARTH WORK.

Mile 14 From Sta.	To Sta.	Dist.		Cu. yds.	Rate	Cost	Total
			Overhaul Free Haul	5322	.25	1330.50	$1330.50

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
20+05	18″	36′	1.90	68.40	5.00	
41+00	24″	36′	2.90	104.40	10.00	
43+75	36″	50′	3.90	195.00	25.00	
53+75	36″	46′	3.90	179.40	25.00	
3+00	24″	46′	2.90	133.40	10.00	
17+00	24″	32′	2.90	92.80	10.00	
			Total	773.40	85.00	858.40
						$ 2188.90

1368 1367 1366

Mile 15

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
33+00	43+00	1000	500	150	.31	46.50	
48+00	54+00	600	100	500	.27	135.00	
373+00	379+00	600	100	600	.27	162.00	
372+00	385+00	1300	800	200	.35	70.00	
						1470.25	
			Free Haul	5881	.25		
			Total	7331		1883.75	$1883.75

GUARD FENCING.

Sta.	Linear Feet Left	Right			
53+00		100			
		100	Total 100	Linear Feet at .30¢	30.00

1871 1870 1869

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
30+00	24"	36'	2.90	104.40	10.00	
35+00	24"	36'	2.90	104.40	10.00	
42+90	24"	40'	2.90	116.00	10.00	
385+25	24"	30'	2.90	87.00	10.00	
387+50	18"	30'	1.90	57.00	5.00	
			Total	468.80	45.00	513.80

BRIDGES.

Sta.		
371+00	Trancas Canyon, Combination Pile Trestle,	5500.00
	Total	$ 7927.55

(Design)

Mile 16

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
19+00	28+00	900	400	200	.30	60.00	
21+40	27+40	600	100	600	.27	60.00	
			Free Haul	9020	.25	2255.00	
			Total	9820		2477.00	$2477.00

GUARD FENCING.

Sta.	Linear Feet Left	Right			
21+00	200	200			
25+00	400				
	600	200	Total 800 Linear feet at .30¢		240.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall
397+00	18"	30'	1.90	57.00	5.00
400+50	30"	30'	3.50	105.00	15.00

			1377		1376		1375	
10+30	36″	30′		3.90	117.00	25.00		
13+00	18″	32′		1.90	60.80	5.00		
22+00	60″	100′		8.90	890.00	60.00		
25+90	18″	30′		1.90	57.00	5.00		
			Total		1286.80	115.00	1401.80	
						Total	$ 4118.80	

Mile 17.

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
53+00	59+00	600	100	200	.27	54.00	
				7012	.25	1753.00	
			Total	7212		1807.00	1807.00

GUARD FENCING.

Sta.	Linear Feet	
	Left	Right
58+00	150	100
77+50	50	50

85+00	60	60		
	260	210	Total 470 Linear Feet at .30¢	141.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
38+00	24″	30′	2.90	87.00	10 00	
47+00	24″	30′	2.90	87 00	10 00	
67+50	18″	30′	1.90	57 00	5 00	
77+65	24″	100′	2.90	290 00	10 00	
85+30	24″	90′	2.90	261 00	10 00	
			Total	782 00	45 00	827 00

BRIDGES.

Sta.		
58+80	Encinal Canyon (H. E. Warrington, Estimate)	1700.00
	Total	$ 4475.00

(Design)

1383 1382 1381

1 Standard 38′ Wooden Truss.
Wooden Bulkheads and Wings, with posts set in concrete.

Mile 18

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
90+00	101+00	1100	600	100	.33	33.00	
115+00	122+00	700	200	400	.28	112.00	
			Free Haul	7946	.25	1986.50	
			Total	8446		2131.50	$2131.50

GUARD FENCING

Sta.	Linear Feet Left	Linear Feet Right		
92+00	50	50		
101+50	40	40		
110+00	40	40		
113+50	50	50		
121+00	100	100		
	280	280	Total 560 Linear feet at .30¢	168.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
91+80	24"	60'	2.90	174.00	10.00	
99+40	18"	30'	1.90	57.00	5.00	
101+50	30"	70'	3.50	245.00	15.00	
110+10	24"	60'	2.90	174.00	10.00	
113+40	24"	60'	2.90	174.00	10.00	
126+70	18"	36'	1.90	68.40	5.00	
		Total		892.40	55.00	947.40
						$ 3246.90

BRIDGES.

Sta.		
121+55	First Canyon East of Lechuza (H. E. Warrington, Estimate)	2650.00
	Total	$ 5896.90

1 Standard 38′ Wooden Truss.
2 do 19′ Trestle Spans.
Wooden Bulkhead and Wings with posts set in concrete.
Wooden Posts set in concrete.

Mile 19

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
			Free Haul	6098	25	1524.50	$1524.50

GUARD FENCING

Sta.	Linear Feet Left	Linear Feet Right		
147+50	100	100		
183+00	60	50		
	160	150	Total 310 Linear feet at .30¢	93.00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall
157+60	18″	30′	1.90	57.00	5 00
159+50	18″	30′	1 90	57 00	5 00

				1892	1891	1890
170+20	24″	32′	2 90	92 80	10 00	
172+40	18″	30′	1 90	57 00	5 00	
179+90	24″	40′	2 90	116 00	10 00	
183+25	24″	80′	2 90	232 00	10 00	
193+00	18″	30′	1 90	57 00	5 00	
			Total	668 80	50 00	718.80

BRIDGES.

Sta.		
147+30	Los Alisos Canyon (H. E. Warrington, Estimate)	2400.00
	Total	$ 4736.30

(Design)

1 Standard 38′ Wooden Truss.
1 do 19′ Trestle Span.
Wooden Bulkhead and Wings, with posts set in concrete.
Wooden Pier, with posts set in concrete.

1895 1894 1893

Mile 20

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
191+00	199+00	800	300	200	.29	58.00	
229+00	237+00	800	300	200	.29	58.00	
			Free Haul	11914	.25	2978.50	
			Total	12314		3094.50	$3094.50

GUARD FENCING.

Sta.	Linear Feet Left	Right					
199+00	100	100					
221+00	230	100					
230+00	80	30					
237+50	100						
	510	230	Total 740	Linear feet at .30¢			222.00

1398 1397 1396

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
213+50	24"	30'	2 90	87 00	10 00	
221+50	48"	130'	5.60	728 00	35 00	
230+45	24"	80'	2 90	232 00	10 00	
237+60	30"	50'	3 50	175 00	15 00	
		Total		1222 00	70 00	1292 00

BRIDGES.

Sta.		
199+75	Nicholas Canyon (H. E. Warring, Estimate)	1700.00
	Total	$ 6308.50

(Design) 1 Standard 38' Wooden Truss.
Wooden Bulkhead and Wings, with posts set in concrete.
Wooden Pier, with posts set in concrete.

1401 1400 1399

Mile 21

EARTH WORK

From Sta.	To Sta.	Dist.	Overhaul	Cu. yds.	Rate	Cost	Total
258+00	268+00	1000	500	600	.31	186.00	
			Free Haul	8592	.25	2148.00	
			Total	9192		2334 00	$2334.00

GUARD FENCING.

Sta.	Linear Feet Left	Right		
247+00	140	120		
250+00	100			
	240	120	Total 360 Linear feet at .30¢	108 00

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall
264+80	36″	110′	3 90	429 00	25 00
249+80	24″	80′	2 90	232 00	10 00
253+40	18″	50′	1 90	95 00	5 00
1+40	24″	30′	2 90	87 00	10 00

—471—

		1404		1408		1402
6+00	24″	30′	2 90	87 00	10 00	
10+00	24″	36′	2 90	104 40	10 00	
19+00	24″	30′	2 90	87 00	10 00	
26+00	30″	30′	3 50	105 00	15 00	
			Total	1226 40	95 00	1321 40

BRIDGES.

Sta.		
270+00	Arroyo Sequit Canyon: Combination Pile Trestle Bridge.	4000 00
	Total	$ 7763 40

(Design)

EARTH WORK

Mile 21.18 From Sta.	To Sta.	Dist.		Cu. yds.	Rate	Cost	Total
			Overhaul Free Haul	3024	.25	756 00	$756 00

1407 1406 1405

PIPES.

Sta.	Size	Length	Cost per ft.	Cost	Headwall	
32+00	24"	30'	2.90	87 00	10 00	
		Total		87 00	10 00	97 00
					Total	$853.00

SUMMARY OF PIPES.

Size	Total Length	Rate per ft.	Cost
18"	2242	1 90	$4259 80
24"	2134	2 90	6188 60
30"	916	3 50	3206 00
36"	550	3 90	2145 00
48"	230	5 60	1288 00
60"	930	8 90	8277 00
		Total	$ 25364.40

Mile	Div.	Cu. yds of Excava'n	Est Cost of Excava'n	Est Cost of Pipes	Est Cost of H'd Walls	Est Cost of Bridges	Est Cost of Guard Fencing	Total Cost
			1410			1409		1408
1	1	5466	1442 50	311 60	20 00	1600 00		3374 10
2	1	4265	1135 25	319 20	20 00			1474 45
3	1	9432	2828 50	418 00	42 00	15000 00		18288 50
4	1	9432	2658 00	542.20	43 00			3243 20
5	1	19330	4842 50	5939 40	290 00		312.00	11383 90
6	1	14912	3761 00	2372 20	93 00		108.00	6334 20
7	1	33533	8548 25	1206 60	53 00	13600 00	315 00	23722 85
8	1 2	37824	9456 00	837 00	50 00	15100 00	225 00	25668 00
9	2	44324	11276 00	1936 00	105 00	14500 00	225 00	28042 00
10	2 3	16549	4150 25	1406 00	55 00		228 00	5839 25
11	3	7320	1830 00	411 00	35 00	3600 00	195 00	6071 00
12	3	6515	1632 75	1191 00	90 00		150 00	3063 75

		1418				1412		1411
13	3 4	10251	2562 75	1066 60	105 00	4000 00	120 00	7854 35
14	4 5	5322	1330 50	773 40	85 00			2188 90
15	5 6	7331	1883 75	468 80	45 00	5500 00	30 00	7927 55
16	6/7	9820	2477 00	1286 80	115 00		240 00	4118 80
17	7	7212	1807 00	782 00	45 00	1700 00	141 00	4475 00
18	7	8446	2131 50	892 40	55 00	2650 00	168 00	5896 90
19	7	6098	1524 50	668 80	50 00	2400 00	93 00	4736 30
20	7	12314	3094 50	1222 00	70 00	1700 00	222 00	6308 50
	7							
21	8	9192	2334 00	1226 40	95 00	4000 00	108 00	7763 40
21.18	8	3024	756 00	87 00	10 00			853 00
		287912	$ 73462 50	$25364 40	1571 00	85350 00	2880 00	188627 90

Wherever the minus sign is used in the above estimate a plus sign was intended.

1414 *Cross-Examination*

By Mr. Burnell:

This is not the only estimate we have made for the cost of constructing the road over the Malibu Ranch. I have another estimate with me.

(Witness hands paper to counsel.)

Mr. Burnell: The document you have just handed to me, Mr. Jones, is entitled "Malibu Road, from east line of Malibu Ranch to west
1415 line of Los Angeles county, estimated cost of constructing ten-foot road-bed along the line shown on county surveyor's map, etc."

Mr. Anderson: Now, Mr. Burnell, if you wish to make an offer of that, I wish to have an opportunity to object to its contents.

Mr. Burnell: Oh yes. This estimate was also made by you as county surveyor? A. Yes sir; it was made in the county surveyor's de-
1416 partment at the same time the other was made. Likewise was it made at the request of the board of supervisors—

Q. And like the other it is an official document? A. Yes sir.

Q. And the cost is shown on the final page, the final summary? That contains the general figures of the report? A. That is correct.

Mr. Anderson: Do you wish to offer that?

Mr. Burnell: Yes.

Mr. Anderson: I object.

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October Term, 1942

1417 Mr. Burnell: I have not made my offer yet. We now offer the document in evidence, under the same conditions as the one Mr. Anderson offered, namely, that the reporter copy it into the record.

Mr. Anderson: We object to that document, if the court please, on the ground it is not cross-examination. That is the only objection we have to it. We didn't ask him anything about that. It does not tend to impeach. It relates to a different condition.

1418 The Court: I don't see how it has any relevancy.

Mr. Burnell: The defendants have offered and introduced in evidence the surveyor's estimate of the cost of building an actual twenty-two foot road instead of a ten-foot road. We offer this in evidence upon the theory that it is material and relevant because of the fact that the defendants have already been allowed to bring in one estimate. This is the other estimate made at the same time, one being for a
1419 twenty-two-foot roadway and the other for a ten-foot roadway. It seems to me it is admissible on the theory that it would be admissible if they had produced a part of a document and this was the rest of that document. They have produced part of a document. We ask that the rest of the estimate be put in.

The Court: Objection overruled.

To which ruling the defendants then and there duly excepted.

Exception No. 9.

MALIBU ROAD
From East line of Malibu Ranch
to
West line of Los Angeles County.

ESTIMATED COST
of
Constructing a 10 Foot Road Bed Within the Proposed Right of Way Shown on County Surveyor's Map No. 8070, Sheets 1 to 4.

NOTE: This estimate was made in 1916 and was based on prices as they existed at that time.

Location	Description	Total Cost
Mile 1	From Las Flores Canyon follow present traveled road, where same is within the limits of proposed right of way as shown on county surveyor's map No. 8070, sheets 1 to 4. Where present road is not within said right of way, it can in most cases be changed to within same by changing direction of travel. From Station 24+00 to 31+00 make excavation sufficient to make roadway over sand from Station 31+00 to Station 36+00.	

	1425	1424	1423
	Also from Station 42+00 to Station 46+00 make fill over sand. Estimated cost of work		$125.00
Mile 2	Present road (may be used)		- - -
Mile 3	From Station 138+00 to Station 140+00 road should be cut back into bank a short distance to keep travel within proposed right of way. From Station 143+00 to Station 154+00 present surface should be ploughed and scraped sufficiently to make it passable. Estimated cost of work		$150.00
Mile 4	From Station 157+00 to 194+50 surface should be ploughed and scraped sufficientlv to make passable. Estimated cost	$200.00	
	From Station 200+00 west, road will have to be constructed over new location. 775 cu. yds. Excavation at .25c	$193.75	

1428 1427 1426

PIPES.

	Sta.	Size	Length	Cost per ft.	Total Cost		
	205+40	24″	40′	2.90	116.00	116.00	$509.75
Mile 5	7429 cu. yds. Excavation at .25c					1857.25	

PIPES.

Sta.	Size	Length	Cost per ft.	Total Cost		
227+30	30″	30′	3.50	105.00		
240+10 (2+60″)	60″	180′	8.90	1602.00		
260+90 (2+60″)	60″	140′	8.90	1240.00	2953.00	4810.25

Location	Description					Amount	Total Cost
Mile 6	6478 cu. yds. Excavation at .25c					$1619.50	
			PIPES.				
	Sta.	Size	Length	Cost per ft.	Total Cost		
	299+50	60″	130′	8.90	1157.00		
	312+65	36″	100′	5.50	550.00		
						1707.00	$3326.50
Mile 7	9518 cu. yds. Excavation at .25c					2379.50	
			PIPES.				
	Sta.	Size	Length	Cost per ft.	Total Cost		
	319+70	30″	110′	3.50	385.00		
	353+42	18″	30′	1.90	57.00	442.00	2821.50
Mile 8	14270 cu. yds. Excavation at .25c					3567.50	3567.50

1434 1433 1432

Location	Description					Amount	Total Cost
Mile 9	12273 cu. yds. Excavation at .25c					3068.25	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	20+00	30″	50′	3.50	175.00	175.00	3243.25
Mile 10	2655 cu. yds. Excavation at .25c					$663.75	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	84+90	30″	70′	3.50	245.00		
	96+90	30″	60′	3.50	210.00	455.00	$1118.75
Mile 11	2303 cu. yds. Excavation at .25c					575.75	575.75

—482—

1487 1486 1485

Location	Description					Amount	Total Cost
Mile 12	1478 cu. yds. Excavation at .25c					369.50	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	73+65	60″	50′	8.90	445.00		
	97+35	24″	30′	2.90	87.00	532.00	901.50
Mile 13	1959 cu. yds. Excavation at .25c					489.75	489.75
Mile 14	1048 cu. yds. Excavation at .25c					262.00	262.00
Mile 15	2347 cu. yds. Excavation at .25c					$586.75	$586.75
Mile 16	1116 cu. yds. Excavation at .25c					279.00	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	22+00	60″	100′	8.90	890.00	890.00	1169.00

483

1440 1439 1438

Mile 17	1864 cu. yds. Excavation at .25c					466.00	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	85+30	24"	90'	2.90	261.00	261.00	727.00
Mile 18	2961 cu. yds. Excavation at .25c					740.25	740.25
Mile 19	3278 cu. yds. Excavation at .25c					819.50	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	183+25	24"	80'	2.90	232.00	232.00	
	147+50 Temporary Bridge (In Los Alisos Canyon)					500.00	1551.50
Location	Description					Amount	Total Cost
Mile 20	3139 cu. yds. Excavation at 25c					$784.75	$784.75

Mile 21	1476 cu. yds. Excavation at 25c					369.00	
	PIPES.						
	Sta.	Size	Length	Cost per ft.	Total Cost		
	246+80	36″	60′	3.90	234.00	234.00	603.00
Mile to 21.18	556 cu. yds. Excavation at .25c					139.00	139.00

SUMMARY.

Mile	Div.	Cu. Yds. Excavation	Est. Cost Excavation	Est. Cost Pipe	Total Cost	Accumulative Cost not including Engineering
1	1		125.00		$ 125.00	$ 125.00
2	1					125.00
3	1		150 00		150.00	275.00
4	1	775	393 75	116.00	509.75	784.75
5	1	7429	1,875 25	2,953.00	4,810.25	5,595.00
6	1	6478	1,619.50	1,707.00	3,326.50	8,921.50
7	1	9518	2,379.50	442.00	2,821.50	11,743.00
8	½	14270	3,567.50		3,567.50	15,310.50

			1446		1445	1444
9	2	12273	3,068.25	175.00	3,243.25	18,553.75
10	⅔	2655	663.75	455.00	1,118.75	19,672.50
11	3	2303	575.75		575.75	20,248.25
12	3	1478	369.50	532.00	901.50	21,149.75
13	¾	1959	489.75		489.75	21,639.50
14	4/5	1048	262.00		262.00	21,901.50
15	5/6	2347	586.75		586.75	22,488.25
16	6/7	1116	279.00	890.00	1,169.00	23,657.25
17	7	1864	466.00	261.00	727.00	24,384.25
18	7	2961	740.25		740.25	25,124.50
19	7	3278	819.50	732.00	1,551.50	26,676.00
20	7	3139	784.75		784.75	27,460.75
21	7/8	1476	369.00	234.00	603.00	27,063.75
21.18	8	556	139.00		139.00	28,202.75
Total		76923	$19,705.75	$8,497.00	$28,202.75	
Engineering & contingencies (approx.) 10%					2,797.25	
Total estimate					$31,000.00	

1447 Mr. Burnell: The total figures on this document, Your Honor, are as follows: Miles 21.18; cubic yards of excavation, 76,923; estimated cost of excavation, $19,705.75; estimated cost of pipe, $8,497; total cost, $28,202.75; engineering and contingencies, approximately ten per cent, $2,797.25; total estimate, $31,000.00.

Mr. Anderson: Even?

Mr. Burnell: $31,000.00 even as against the
1448 total cost of the twenty-two-foot road of $188,-627.00.

(Witness continuing.) Prior to making these estimates I had been over part of the line of the proposed right-of-way through Malibu Ranch. I was not personally on the survey myself, but members of our force did the work. Mr. Comly was on the job all the time. His position is deputy county survey at this time. At the time the survey was made he held the
1449 same position in the department that he does now, deputy county surveyor. I am familiar with the contour of the country over which the road goes. In the estimated cost the purpose of the excavation is to bring the road to a desired grade; the proposed right of way skirts the hills in places, and it is to make the road level.

Redirect Examination

By Mr. Anderson:

Q. I note that the document marked defendant's exhibit 5, which is the estimated cost of

1450 constructing a twenty-two foot road-bed, and on the last page in the summary I note that in the estimated cost of bridges you estimate something like thirteen bridges. Does that include what you call culverts and trestle work, as well as ordinary bridges? A. The detailed estimate there shows in each case what sort of bridge is proposed on each mile.

Mr. Anderson: If the court please, in addition to what I have already read in the rec-
1451 ord, I would like to read this from page 1: Bridges, 40 foot pile trestle, $800; 40 foot pile trestle, $800; from page 3, Malibu bridge, 600 foot pile and cylinder piers, $15,000; on page 7½ bridges, Corral canyon, H. A. Warrington estimate, $13,600; page 8½ bridges, Solstice canyon, H. A. Warrington estimate, $15,100; on page 9½ bridges, Latigo canyon, cattle pass, $500; Escondido canyon, H. A. Warrington es-
1452 timate, $14,000; on page 11, Ramirez canyon, H. A. Warrington estimate, $3,600; on page 13, Dume (Zuma canyon) 160 feet of pile trestle at $25.00; $4,000; on page 15, bridges, Trancas canyon, combination pile trestle, $5,500; on page 17, bridges, Encinal canyon, H. A. Warrington estimate, $1,700; on page 18½, bridges, first canyon east of Lachusa, H. A. Warrington, estimate, $2,650; on page 19, of bridges, Los Alisos canyon, H. A. Warrington estimate, $2,400; on page 20, bridges, Nicolas canyon, H. A. War-

1453 rington estimate, $1,700; on page 21, bridges, Arroyo Sequit canyon, combination pile trestle bridge, $4,000, which I believe is all. Do you know why there was no estimate in this document for a bridge across Lachusa canyon? A. I don't remember now. I presume our records would show why that is omitted. I couldn't tell you offhand.

Q. Calling your attention to the document which was admitted in evidence here as plain-
1454 tiff's exhibit "A," being the estimated cost of constructing the ten-foot roadway within the proposed right-of-way, I will ask you whether or not that document anywhere contains any estimate for any bridges, culverts, or trestles? A. It includes some pipes; no trestle bridges.

Q. The pipes which are included in this document that I have just—this document Defendant's Exhibit 5—are the pipes which you sum-
1455 marize here on page 22 as amounting to $25,-364.40—are they included in the plaintiff's Exhibit "A"? A. I presume they are; I couldn't say without comparing them. I consider pipes in the nature of bridges. The purpose of the pipes is to take care of the drainage. They are not bridges, or trestles.

Q. Then from this plaintiff's Exhibit "A," in so far as these pipes are concerned, I should like to read the following: On page 2, estimate of pipes aggregating $2953; on page 3 estimate

1456 of pipes aggregating $1707; another estimate of pipes aggregating $442; another estimate of pipes aggregating $175; on page 4 another estimate aggregating $455; also on the same page $532; on page 5 an estimate aggregating $890; and another estimate of pipes aggregating $232. I see you have on page 5, an item, "Temporary bridge Los Alisos canon $500." That was a bridge estimated and not a pipe estimated? A. I believe so.

1457 Q. I see on page 6, an estimate of pipe, $234. Then as a matter of fact, only two items that are really contained in this estimate, with the exception of the $500 for the temporary Los Alisos Canyon bridge, the only two estimates are the cost of excavation and pipes? A. I think that that is a fact. (Witness examined the paper.) That is correct. This summary on page 7 of plaintiff's Exhibit "A," under item of esti-

1458 mated cost of pipe, that includes the temporary bridge.

Q. Now, I call your attention to the fact that the summary of pipes on page 22 of defendant's Exhibit 5, shows a total expenditure or an estimate of $25,364.40. I call your further attention to the fact that the total estimate of the pipes on page 7, which, as you see, includes the temporary Los Alisos Canon bridge, shows a total $8497. Why were the pipes estimated at so much less cost for the ten-foot road than the

1459 twenty-two-foot road? A. A ten-foot road is not as expensive as a twenty-two foot road.

Q. Don't you need a large carrying capacity for the pipes? A. Not to carry water across the roadway; those pipes are not all to take care of the drainage which comes down the stream, but the water alongside the road, as you will find on all mountain roads.

Q. You think that a ten-foot road would re-
1460 quire a different size pipe from a twenty-two foot road? A. That is what our estimate shows.

Recross-Examination

By Mr. Burnell:

Referring to some of the bridges, those are generally bridges where the road crosses canons. We have a standard or average amount of clearance above the ground for those bridges. Those bridge estimates were made by the bridge
1461 engineer of this county and they are standard clearances. What is the clearance allowed above the floor of the canon all depends on the canon and the length of the bridge; the thing you have to take care of is the amount of water way necessary, and the height of your bridge depends on the width of your stream, which fixes to some extent the length of the bridge the same as the height. I don't think the clearance under any of our bridges has at any time been less than eight or ten feet, though I would have to

look at the details before I would be able to say because it was a couple of years ago that the estimate was made. This estimate itself does not show the amount of clearance under the bridges; however, the deputy who made the actual figures could tell you. That was Mr. Comly. He made the general estimate for the most part, the bridge estimates were made by the county bridge engineer as shown in this estimate. The estimate for the ten-foot roadway was made for the reason that the question came up as to what it would cost to build a road which would be passable, a road similar to the road which is now traveled through the Rindge ranch. The width of the present road, as I remember it, most of the way, is the width of a wagon track. It is probably, roughly, I would suppose it would average probably eight feet, might be ten.

Redirect Examination

By Mr. Anderson:

I think a ten-foot road along the edge of a mountain such as I refer to would be called a passable road. I would think that these roads that we have contemplated, the 10 foot road, that there will be a passage through the ranch over it during the rainy season. That road across Malibu flats, where the long trestle is contemplated would be passable whenever the present road would be.

1465 F. B. SCOTTON,

a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My name is F. B. Scotton. I live in Los Angeles. I am forty-four years old. I am secretary to the Rindge people and their companies. My duties in that regard are very general; various duties, handling all kinds of business, in-
1466 cluding the business in connection with the Malibu Ranch. I have been connected with the Rindge interests—known as the Rindge properties, eighteen years in California. During that period I have had occasion to thoroughly familiarize myself with the Rindge properties and the surrounding country, particularly in connection with various litigation that has arisen from time to time in that section, and
1467 am very familiar with all that surrounding country. This document on the blackboard is an enlargement of the U. S. Topographical Sheets. (It was agreed between counsel that the map in question might be offered in evidence, and it was received as marked and is Defendants' Exhibit 6.)

(The Witness continuing.) It is a photographic enlargement.

Mr. Burnell: There is just one mistake on that map. That is, that what is known as

1468 Nicolas Canyon is really Los Alisos, and Nicolas is the next canyon.

Mr. Anderson: Yes, we will so stipulate; and we will ask leave at the adjournment to make that change in the lettering on that, and eliminate the word "Nicolas Canyon," and transfer it to the correct place.

Mr. Burnell: Yes. We will agree to that.

Q. By Mr. Anderson: Now, Mr. Scotton, do you know the scale of that map? A. The
1469 original map was 1 and 125/1000. It has been enlarged eight times. That would cut down the scale eight times. On the original map, the central portion was enlarged eight times so as to bring it all up to the scale.

Q. Now, I believe it has been stipulated that these figures which appear variously over the map, 2216, 2819, 2076, are elevations given in feet.

1470 Mr. Burnell: Elevations in feet above the sea level at high tide.

Q. By Mr. Anderson: These various lines which meander around here, are what is known as the contour lines, and indicate the level at the point where the line touches.

Mr. Burnell: Yes, on any one contour line, the same level obtains and the lines are 100 feet apart.

The Witness: Correct as to the central por-

1471 tion. The contour lines on the two end pieces are 50 feet apart.

Q. By Mr. Anderson: Take the pointer and indicate what the various colors on the map indicate. A. This indicates the portion being in Ventura county. The black dot and dash line indicates the boundary line between Los Angeles and Ventura counties. The heavy purple line indicates the Malibu-Topanga-Trancas
1472 grant line, that being the Malibu Ranch and the piece of property across which the road in the so-called main case is sought to be condemned. The purple is within the ranch, the northern portion—at the northern portion there is a black dot and dash line indicating the line of the grant. The heavy red line within the Malibu Ranch, running from Los Flores Canyon on the east to the Ventura county line on the west indicates the relative position of the road sought to
1473 be condemned through the Malibu Ranch. I placed that upon the map, that is, the map No. 5, exhibit A (of the complaint). The heavy black dark line at the upper part of the map indicates the relative location of the state highway—Ventura state highway, "state highway" being marked on in red roughly. The light purple areas marking various points, north of the Malibu Ranch line, mark the holdings of the Rindge Company and May K. Rindge, outside of the Malibu Ranch. The yellow lines, between the

1474 north line of the Malibu Ranch and the state highway, indicate some of the roadways that have been and are in use at the present time. All of the other black lines upon the map are those that were upon the topographical sheets. The yellow line on the outside of the ranch line running to Ventura county is the old roadway into Venture that was in existence prior to the building of the state highway, and still exists. Santa Monica is at the southwestern portion of the
1475 map—the lower lefthand corner. Los Angeles would be out from the upper right hand corner. Triunfo on the state highway is directly north of the first "S" in "Russell Valley," and about the center of the map. I can mark that with a blue pencil. (Witness marks on map.) I have drawn a circle in black around the point on the state highway directly above the first "S" in "Russell," to indicate Triunfo post-office. I have marked upon the map, the words "Triunfo
1476 P. O." and have drawn an arrow pointing toward the dark point in the center of the circle, the location of Triunfo post-office. Camarillo is just above the top of the present map where the state highway runs out to the left towards Ventura, just above the present part of this map. There is not quite enough here to indicate it. The word "Calabasas" appears twice along the state highway. The place where Calabasas proper is situated is the one to the

1477 east, directly beyond the final "Y" in "Highway."

Q. Does that map show the route running from the Decker place to the Triunfo post-office? A. That is not indicated here. I can mark that on in colored pencil if you desire. It is part of the yellow starting from just north of the Malibu Ranch line in Los Alisos canon, and running in a general northerly and a little easterly on the yellow line to a point on the "S" in
1478 "Santa Monica mountains," about the middle of the map, and meanders along over into Russell Valley.

Mr. Anderson: Do you object to his putting the general course on there?

Mr. Burnell: No, it will be understood, of course, that that is Mr. Scotton's opinion as to where it is.

The Court: You might do that later on, gen-
1479 tlemen. He might want to do it with a little more care.

(Continuing.) Cornell is about the center of the map, about where "I" in "Triunfo" is, and in the canon that results from the Russell Valley, in a southwestern general direction. I have drawn the circle around the junction, and written the word "Cornell" just underneath.

1480 *Cross-Examination*

By Mr. Burnell:

The top of the map is north, the bottom is south, the right hand is east, the left hand west. That is almost absolute.

Q. You stated that you had indicated in yellow the important roads; by that you mean the ones you personally consider important? A. I think I said, "Some of the roads." There is a road up Topango Canon running up from the
1481 beach, right through the canon, to the Ventura state highway. That is a wide, well-made and much traveled highway. I didn't put the yellow on there to indicate that road, simply from lack of time. I hustled pretty much to get this in. There is no yellow line indicating the road from the city of Santa Monica along the beach to Las Flores Canyon. That is a very much traveled country road, and a great many vehi-
1482 cles pass over it every week. I consider it an important road. The road which begins at Cornell and runs in a generally southwesterly direction with a number of different termini, one of which is marked "Nicolas Canyon" but what is really Los Alisos Canyon, goes at the terminus, nearest to the point marked Nicolas Canyon, about two-thirds of the way between the canyon and La Chusa, to, roughly, about Charley Decker's place. I have been over that road. To my knowledge it has been driven over once.

1483 I know that they have driven up part way in an automobile. I have driven, in a southwesterly direction, in a Pierce Arrow for about a mile or more to a place called Hot Springs. That is not shown on the map. The squares on the map, drawn by the parallel lines, represent a square mile. I am familiar with the grade of the road from Cornell to Decker's. I am not familiar with the degree of grade. I have been over it.
1484 It is a wagon road, regular mountain wagon road, just about wide enough for a wagon, with turn-outs at places. I would call it a steep road at places upon the road. With respect to the various branches of this road which leads from Cornell to Decker place, some of them are steep in places. All of them can be improved and made easily passable. I have been told some of them are steep and some are not. Away up in this canyon here it is not so steep. I have been
1485 over the road that is shown on the map running from Lobe Canyon south of the Ventura state highway and running in a general westerly and southerly direction past the point just below where the word "Stokes" is written. That road is very good in some places; poor in others. Up in this Cold Creek country, which is in the neighborhood of that road you have asked me to tell you about, there are a number of people live that I know—Sheriff Cline and Ralph Hamlin and Ed Wehrle, and many others, who drive

1486 automobiles and go in there to their places with automobiles up this road. That is not the road that goes up clear to the Crags Country Club. It continues around to the west or northerly, and then it gets over to the Crags Country Club, which is over here (indicating). There is one road in Liberty Canon, running from Grape Arbor on the state highway in a southerly direction, not indicated in yellow on the map. I have not marked that one simply for lack of time;
1487 and one at Calabasas in a southerly direction and one west of Calabasas. The road I have marked from the state highway, running out just below the letter "H" in the word "Highway," and proceeding southerly to a point near the word "Stokes," is longer than the road that runs down Liberty Canon. It would not have taken me as long to mark the Liberty Canon road as to mark the other. I marked the road
1488 running from the state highway and not the road up Liberty Canon, because the former happened to be in my mind, because I had recently traveled over it a number of times. That is the only reason I can give for having marked the one road and not the other; the point I have marked "Cornell" was the location of the Cornell post-office, the post-office for the district of the mountains to the south and to the west running away over into the extreme corner, I believe, of Los Angeles county, including all the

1489 territory in the Decker's and others, and along what we have termed—what has been mentioned here as the Decker road; besides the post-office at that point there is a library and school house, no town. At that point I have marked "Triunfo" is a post-office, store and residence. I think there is only one store there; there may be some other places, but I don't know.

Mr. Burnell: Mr. Anderson, while I think of it, Mr. Patton referred yesterday a number
1490 of times to Strawberry Park and he tells me he means Newberry Park, and I ask that whereever he referred to Strawberry Park that the word be corrected to read Newberry Park.

Mr. Newby: Yes.

Mr. Burnell: So it may be understood that yesterday, in Mr. Patton's testimony, wherever he referred to Strawberry Park he means Newberry Park.

1491 The Court: Very well.

(Continuing.) I don't remember what there is at Newberry Park. I have been through there; I don't remember whether it is a town of any size. I have in part marked in yellow the route taken by the road along near the Decker road running from Decker's place to the Triunfo post-office. The portions of that road that I have not so marked, as I now recall it, it would be at a point about southwest of the "S" in "Santa Monica"—the words "Santa Monica"

1492 indicating Santa Monica mountains, and running in a northwesterly direction until you get over near the Little Mathieson Lake, or Russell Lake, out in here somewhere (indicating), out in these alfalfa fields, and along over the Conejo road to the Russell ranch headquarters, and out in a northerly direction to Triunfo post-office. I did not make that in yellow for lack of time. I have the map right here with me. I can
1493 show you and put it on if you want to. My lack of time was not such as I marked only those roads, that I considered important. I said some of the important roads. Some of the roads I thought important I omitted because of lack of time. This lake which I spoke of is located on the map along in here somewhere on the Ventura side of the county line. The road from Decker's place passes over the mountain where the map shows 2076 feet. The road at that
1494 point is 1846 feet above sea level. Then it passes by this Russell Lake, and so on to the road indicated in yellow which leaves the state highway at Russell Valley as indicated on the map, where the elevation is *k*,000 feet, and then goes west. I think no portion of that road goes through private property—Well, I don't know whether the Russell ranch has deeded this roadway to the county or not. I understood that they had deeded a road from the Triunfo post-office to the ranch buildings, and also from a

1495 point in there, to the west end of their property, the road indicated running parallel with the word "Russell" is an old county road. I don't know whether all of the road which Mr. Decker would have to travel were he to leave Triunfo postoffice and go to his home, is a private road or is it public road. I know that the county has spent thousands of dollars. I know a point on the road to Decker's sometimes called Malloy Hill. The character of the road where it goes
1496 over the hill is a good wagon road. The county survey at that point is a 15 per cent grade. As to the actual road, I don't know. I think it would take a good strong team with a ton load to get up that hill. Two good horses could haul a wagon up that hill, I think, resting at the flat places on the roadway, at the present time. The place on the map marked in purple which lies just at the southerly extremity of a road which
1497 I have marked in yellow, which branches off from the road towards Cornell and Decker's is property owned by the Rindge Company; that is true with relation to all of the property marked on the map in purple—the Rindge Company and May K. Rindge. They have property here in Malibu Canyon also. (Indicating.) The part in yellow terminates at the Rindge property. It terminates there because the man who built it stopped it there. He stopped it there because he owned the property before the

1498 Rindge people acquired it. I can point out on this map where some of the so-called settlers live other than Mr. Decker. There is one other person living on the road leading from Charley Decker's house to the Russell ranch which you have asked questions about, out the Charley Decker road, which I was trying to locate. His name is Vaughan, and I think it is right near the point at which I have not continued the yellow Charley Decker road, from Triunfo post-
1499 office out at the end of this other yellow road which runs in the direction of the letter K in the word East Fork of Trancas Canyon. I think that is the property of Mabel Kellar near the end of the road marked in yellow that terminates at a point north of the Trancas grant line, of the Malibu Ranch, and directly north of the letter M in Malibu. That is the old residence of Marion Decker. His family is still
1500 living there.

Now, please point out the route that the family of Marion Decker would take if they desired to go from their place to the city of Santa Monica with wagons—all of the routes exclusive of airships. A. Star[illegible]g at their residence north of the grant line, [illegible]orth from the old Decker road two or three miles, then turn east, northeast to a point on the Triunfo Canyon road at the junction with Sierra Canyon from the old road that they used for

1501 a number of years, and the road over which they went to their property years ago, and continuing in a southeasterly direction to the junction of Triunfo Creek at Vejo Creek, over the Vejo road to the junction of the state highway at Vejo, then to Calabasas, over the old Calabasas road in a southeasterly direction, over the old Toponga road in a southeasterly direction past Toponga post-office down to the coast at the mouth of Topango Canyon and into Santa
1502 Monica and from there anywhere else they wanted to go. They cannot get over the county road at the present time because it is under a lake. It is under an artificial lake, but the way that they used to travel was as I would indicate, and then out over the Crags Country Club to the state highway and as before indicated they would travel over what is known as this point here near Crags camp, southeast of the Crags
1503 Country Club, down around Crater's camp, down to Cline's, out through—down through this canon here, over Russian Hill grade to the junction of the Old Topango road, and Russian Hill grade and then southeast to Topango post-office and the coast and from there anywhere else they wanted to go. I have traveled over those roads myself.

Q. Isn't it a fact that each of the roads you have mentioned contain a number of very steep grades that must be traveled either in going or

1504 coming, and whichever way you go, you go over steep grades? A. No steeper than many other grades in the immediate neighborhood.

Q. Isn't it very steep grades? A. Yes sir.

Q. Right here in Topongo Canon, the old road that leaves Topango post-office and runs north to Calabasas, isn't there an exceedingly steep grade there? A. Yes sir; and going up towards Calabasas. But that same grade has
1505 been used for thirty years; since they built the new road there is very much travel over the old grade, not so much as compared with the new grade. It is not a fact that it takes an exceedingly strong, high-powered car to make that grade. As to the road that Mr. Decker would have to travel going to Triunfo post-office, note that at some places the lines lie very close together as they cross that road.

Q. Now, can you tell us from reading those
1506 contour lines the raise or lowering of elevation that Mr. Decker would have to travel over to get to his house? What I mean is this: Starting at Mr. Charlie Decker's house, tell us how many hundred feet down he has to go or up, as the case may be, to get to Triunfo? A. That would only be a rough estimate, because I do not know the exact location of that road; but I do know that the country in the immediate neighborhood of the road would easily permit of the easing of any grade that is there; by re-

1507 building the old road or changing the course in a few places and getting a road that is much easier and would be much more desirable to travel than the present Topango road from the state highway to the Topango post-office. Mr. Decker's house is right about the "M" in Malibu, about where my pencil is. All that country in that neighborhood is what I would term a high mesa, and there are rolling hills there, and
1508 at various points they are going up and immediately coming down again. Starting from the Marion Decker house, the road goes on a level. I said that those contour lines indicated the same level and there was supposed to be a hundred feet difference between them. I found one contour line just about at Mr. Decker's house and another a little distance from it. That is a hundred feet apart. That runs neither up nor down. The road may run to the right or
1509 left of that contour. May go around on the contour and up, what might be termed a level road part way. Then it may strike a place where it would go down and strike another level place, and go up again and down, and rise over the entire mountain. I couldn't give in detail following Mr. Decker's road from the Marion Decker house, where he would come to a hill and what the use of that hill would be and where he would come to a down hill and what the descent would be. There are a number of settlers in some

1510 of those other canyons, Triunfo and Sequit and Nicolas, up in that mesa country. I couldn't point out the roads which go to their places, the actually existing roads which are traveled over and are capable of being traveled over. One reason that I cannot point them out is not the fact that they do not exist. I know not where Mr. Joseph Bodle lives or owns property, or Mr. Melvin Bodle. To save time, possibly I might state that you have the names of families there
1511 that I don't know where they live. I know some of them. I know Mrs. Elizabeth Haney. Her place, as near as I can point it out, is in the close proximity to that Sierra Canyon road. If I might make this suggestion, this country is all divided up into sections, half and quarter sections and halved and quartered again. Some of the people you are going to call my attention to may only own 20 acres or 40 acres; some may
1512 own 120 or 160. I think I cannot accurately enough place where those forties or eighties or one hundred and twenties may be on the map to be of much, if any, use; but if you wish it, I have an accurate record of about where they are and could mark them on as to the 40 they may own or the 120; but Mrs. Haney I could not put a mark. I would like to state about Mrs. Haney that it is in close proximity to this Sierra Canyon and Decker road. Whether it is in one

1513 section or the adjoining section, I couldn't state offhand.

The Court: Before we adjourn, Mr. Scotton, where is the Yerba Buena district? A. The Yerba Buena district is in Ventura county to the west and to the left of the green line on the map. Most of the people who live up there are west of the corner indicated here on the Ventura county line up in here. You will notice that there is a little mesa up here, right around there,
1514 around the word "canyon" in the word "Little Sycamore Canyon," just west of the Ventura county line.

Mr. Burnell: Now, directing your attention to that point, Mr. Scotton, I will ask you to make a mark showing the location of that settlement, as near as you can, and indicate it by number 2.

The Court: I think that may be done later.
1515 It is close to the hour of adjournment.

(Whereupon, an adjournment was taken until Monday, October 7, 1918, at 10 o'clock A. M.)

1516 Monday, October 7, 1918,

(Jury all present and in the box.)

FRANK H. JOYNER,

a witness called in behalf of the defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My present occupation is road commissioner of Los Angeles county; I have been road com-
1517 missioner since, I think, April 6, 1914, and as such I am familiar with the various roads in the county which are the public roads to which the county contributes in the way of maintenance.

Q. Now, calling your attention to defendant's Exhibit 6, which is a large topographical map showing that section of the county which is immediately adjacent to Ventura county, and
1518 calling your attention to the fact that the green line indicates the boundary line between Los Angeles county and Ventura county, calling your attention to the fact that the purple line indicates the exterior boundary of the Malibu Ranch or land, and calling your attention to the fact that the dark line indicates the state highway, the dark line just beneath the word "state highway," I will ask you to state to the court and the jury what public roads, if any, lie between the state highway—I will go farther. I call

1519 your attention also to the fact that this is the Topango road as indicated by the roads "Topango Canyon," and the yellow line. I will ask you what roads, if any, lie between the state highway on the north, the Rindge ranch on the south, the Topango Canyon road on the east, and the Ventura county line on the west? A. I don't think there is any legal—what we call legal highway.

1520 Q. Now, are there any highways in that section, to which, in the last three or four years, say from 1915 to this date, the county has been contributing in the way of moneys or upkeep? A. On the so-called Decker road.

Q. That road is located about where with reference to that map? A. Part of it is in Ventura county. In so far as Los Angeles county is concerned, that starts higher up. I don't know the exact location of the Decker

1521 road. I think it comes over from Triunfo down over toward—I think it is Nicolas Canyon over there on the west edge of the map. I could locate it on the map, I think, but I have maps in the office. It is a road which runs from the Decker settlement over to Triunfo post-office.

Q. Have you any idea as to the extent to which the county has spent money for its maintenance? A. Possibly two or three thousand dollars. I am not familiar with the roads in Ventura county immediately to the west of Los

1522 Angeles county. I have not familiarized myself at all with the section, so far as public roads are concerned; I have been through the old road, through the Russell ranch and into Cornell and over the state highway. Personally, I do not know whether or not there is any public road in Ventura county between the county line and the mountains to the west.

Cross-Examination

By Mr. Burnell:

1523 Q. I call your attention to the road which has been referred to as the Decker road from the point where the cross is marked on the map, which cross is immediately to the right of the word "canon," in "Nicolas Canon" and leads up, as shown by the yellow line to the point on the road that runs through Russell Valley; part of that road runs through the Russell ranch; does it not? A. Yes, sir. I do not know

1524 whether the road, or any portion of it, running through the Russell ranch is a public road. That would be out of my county, and I would have to look at our maps on which the legal roads are shown. I have in my office maps prepared by the county surveyor on which are roads that the county has determined are legal highways and in my operation I so consider them. I understand there are a great many questions as to whether some of them are legal highways or not. I am simply guided by what the county

1525 surveyor tells me. I have those maps. Those would be available and are available to the county surveyor. He has probably a more complete set than I have. I have never been over the road referred to as the Decker road here.

Q. Now, I call your attention to a road shown in yellow on the map, Defendant's Exhibit 6, from a place indicated on the map with a pencil circle and called Cornell, running east in a general easterly direction to a point directly
1526 north of the C in the word "ocean;" thence running northerly; thence easterly, and joining the old Topango Canyon road; thence running north to Calabassas (indicating on map). Have you been over that road? A. No, sir, not all over it. I have been in along the Vejo Creek. I have been into Cornell, and four or five miles out of Cornell. I think I have been generally there in a southeasterly direction, possibly a little bit
1527 farther in the same direction; perhaps along into there. (Indicating.) Indicated by a sharp bend to the south in the road marked in yellow leading from Topanga, or Topanga Canyon road, to very near to the letter "G" in the word "Goat" in the phrase "Goat Buttes." And the Vejo Creek road is the road that leaves the Ventura state highway running in a southerly direction and running from Cornell to Topanga Canyon at a point just west of the commencement

1528 of the bend just described. I was over that road two years ago. I couldn't answer that exactly, possibly the last time, two years ago. As to the condition of that road in regard to grade, I didn't notice any heavy grades on the road. It seemed to be an ordinary road. I think on that trip I was so much interested in getting the machine through the sand that I didn't pay any attention to the grade. There was much sand
1529 on the grade. The road would not be practical for the use of the automobile in the condition it was in. No work has been done on that road since that time by our forces, to my knowledge. If any work has been done on that road by the county, I should know of it. As far as I know, no work has been done on it. As far as I am at present apprised, the road is now in the same condition as when I went over it. I think that is not considered a public highway. That is a
1530 private road. I was there with Supervisor Pridham once. I have been over there alone in looking up the possibility of obtaining a legal right of way through there. I have never been up to any of the Decker places, the Marion Decker or the Charley Decker place. I was up on the top of the so-called Nigger Hill. I would say it is about three miles from Cornell. It is on the road leading from Cornell in a general southwesterly direction, and being the one shown on the map as Sierra Canyon, and lying about

1531 south of the letter "S" in the word "Sierra," just a little bit east of the "T" in the word "Santa Monica Mountains." I have been over that hill. I happened to walk from Cornell up to the Nigger Hill because I objected to riding a horse. I couldn't get there with the automobile.

Q. Was it impassable for automobiles? A. It is a pretty heavy grade, pretty steep, about twenty or twenty-five per cent. The character
1532 of the road with regard to the soil condition was at that time fairly good dry dirt. That was along in the summer, when it was hot. That was not a public highway on the county surveyor's map; so far as I am advised it is a private road. It could not be used for automobiles. It can not be used for hauling loads with teams. It is too steep. No change has been made in the road since I was over it, to my knowledge. So
1533 far as I am advised it is in the condition now that it was when I went over it. There would be no danger of Nigger Hill road being washed out from water. I went there for the purpose of seeing if a usable road could be developed from the top of what is called Nigger Hill down to Cornell. That is what I was there for, and I came to the conclusion that no such road could be developed with any such money which would be available for the use of the road department. There are no other roads besides those I have

1534 told you about that are shown on the map, that I have been over, except one, from Cornell up to Russell ranch. My recollection of the road, the grades were fairly easy, good usable dirt road over which we had no difficulty in getting through. I think we got the machine to Cornell and outside of opening a gate or two we went right through. We hadn't any trouble. We did not go beyond Cornell on that trip.

Redirect Examination

1535 By Mr. Anderson:

Q. You say that you came to the conclusion that you could not make a road from Nigger Hill with the money at your command. What did you conclude it would cost to make a passable, usable road? A. My recollection is fifty or one hundred thousand dollars to get from the top of Nigger Hill into Cornell. We simply looked at the country as we were going along,

1536 walking up and down the hill.

Q. Have you made any estimate as to what it would cost to put the so-called Decker road into good condition? A. We have those estimates in the office. I think I made an estimate around three thousand dollars, to fix the Decker road so it could be used by automobiles, down to Malibu Ranch from Triunfo.

1537 *Recross-Examination*

By Mr. Burnell:

Q. You say to fix the Decker road down to the Malibu Ranch road—was that from Marion Decker's or Charlie Decker's? A. Charlie Decker's.

Q. That is about where I am pointing. The Charlie Decker place is indicated on the map by a cross on what is called Nicolas Canon, but what is really Los Alisos Canon. From that
1538 point you say that the road would cost how much? A. I think around three thousand dollars.

Q. That would be a road leading from there down to the Rindge property wouldn't it? A. Yes, sir.

Redirect Examination

By Mr. Anderson:

Q. Did I understand you to say that that es-
1539 timate is merely from Charlie Decker's house to the Rindge property, or from Charlie Decker's house to Triunfo? A. My recollection is Charlie Decker's house, to the Rindge line.

Q. Did you estimate what it would cost to make it a usable road from Charley Decker's house to Triunfo, or the county line? A. At the time that the estimate was made, that estimate did not amount to very much because the road had been used; some of my men's machines had been through and up to Decker's

1540 place and the road could be developed down to the Rindge, for an additional two or three thousand dollars.

Q. Your men found the road to be usable for an automobile road from Decker's place and simply estimated from there to the Rindge Ranch? A. Yes, sir.

F. B. SCOTTON,

recalled.

1541

Direct Examination (Resumed)

By Mr. Anderson:

Q. Now, Mr. Scotton, since the adjournment of court on Friday, I understand you have put some additional data on this map, largely at the request of the court and counsel. I would like you to indicate what you have added there, and explain what it is, taking the pointer and going carefully over it so as to locate it in the record.

1542 In other words, wherever you have put additional marks on the map, indicate what it is, and by some means locate it so that it will appear intelligent to the man reading the transcript. A. The so-called Charley Decker road I have completed by adding in yellow a line running in a northerly direction from a point in about the center of Section 10 in Township 1 South, Range 19 West, running in a northerly direction just west of the letter "S" in "Santa," and crossing to the right of the figure 6 in elevation "2075," cross-

ing the Ventura county line. Then to the east of a green spot which marks the Little Mathieson Lake, and continuing on to the roadway running east and west to the Russell Valley. I have added that green spot just to the west of the Ventura line, which is the little Mathieson Lake, and to the west of that a larger green spot which is the Mathieson Lake, the large Mathieson Lake, that being on the old road I have just referred to, running east and west to the Russell Valley and Potrero Ranch. Next I have drawn a large light red oval in Ventura county indicating the settlement of the Ventura people there, what you call the Yerba Buena settlement, and that circle embraces a part of the word "Little Sycamore Canyon;" and the word "Canyon" in "Little Sycamore Canyon." Through that circle and running in a southwesterly direction, and another in a southeasterly direction, and another in a northeasterly direction, and another in a westerly direction, I have made some large red dots indicating a means of travel by the people that live in that settlement. When I saw it some years ago the means of travel was a trail. I have not seen it since. At the end of that trail known as the Triunfo Pass way joins on another yellow road that runs over into the Mathieson Village, Mathieson ranch building, where there is a store for trading purposes. The southeasterly route runs into the

Decker Plateau settlement. The westerly route runs over into what is known as Big Sycamore Canyon, and joins on to the Woods Canyon road running in a westerly direction over to the sea port of Hueneme. That last one I have referred to there—that last way—crosses what is known as the Guadalasca Broome ranch for part of the distance and the rest of it through many properties. That is a public highway, public highway in part. Public highway from Hueneme easterly. Just where the boundary line on the public highway stops, I don't know. I put some smaller red dots in the Sycamore Canyon trail, and other ways around that Little Sycamore settlement. The Little Sycamore settlement is the same as the Yerba Buena settlement. That canyon which is marked "Little Sycamore Canyon" is known commonly as the Yerba Buena. I have placed a number of figures in the centers of various sections, sections commencing at the north up near the boundary line of the Conejo Rancho. In Township 1 South, Range 19 West, I have marked Sections 2, 3, 4, 8, 9, 10, 11, 12, 14, 15, 16, 17, 20, 21 and 22. And it is in that immediate neighborhood where the Decker Plateau people live mostly. In Township 1 South, range 18 west, I have marked sections Nos, 7, 8 and 18. In a number of those sections I have made some red crosses to indicate where some of the people living in

1549 that country live, about which Mr. Burnell tried to ask me the last court day.

Q. Now, Mr. Scotton, while we are on the subject of those red crosses, you might indicate who the different people are that they represent, and I would suggest to the court that you take a red pencil and number them consecutively as you testify.

Mr. Burnell: I suggest that it would be a
1550 good idea for Mr. Scotton to furnish us with a list of the numbers and the names of the people numbered, then the court would have that.

Mr. Anderson: That is a very good idea.

The Court: He can do it as though he were making an index to his interlineations on the map.

Mr. Anderson: Yes.

The Court: He can do it in that way and then we will have the reporter's transcript.

1551 Mr. Anderson: Yes.

A. In section 4 I have put the red cross which ought to be down in section 8. I will remove the one in 4 and put one in 8. The red cross in section 8, range 19 west, indicates near the location of Louis Burger, marked 1. One in section 17, Andrew Humphrey, marked 2 in red. The one in section 20, Charlie Decker, key No. 3. The one in 21, Lulu Carr. I will mark that 4. The one in number 10, in the southwest corner, James Vaughn, No. 5. In the upper part of

1552 No. 10, Cecil Herron, No. 6. The one in section 15, Frank H. Thew, No. 7. Section 11, John Jole, No. 8. Another in section 11, southwest corner, Peter F. Roller, No. 9. One in the southwest portion of section 12, Cecilia Haney. Section 28, the Old Marion Decker place, No. 11. I have marked No. 28 under No. 21. Section 18 of Township 1, south, range 18 west the cross indicates Elliott Rumbo's. Marked No. 12.

1553 These are all the crosses that I put on. From Santa Monica along the coast to the easterly boundary of the Malibu Rancho, I marked the roadway in yellow, from the mouth of Topango canyon and the ocean. I marked the Topango canyon up to Topango post-office and in a northerly direction, between the new Topango road out to the state highway, just south of Van Nuys. I marked in blue the name Van Nuys. From the old Topango road from a point about

1554 a mile northwesterly from the Topango post-office I indicated the roadway that runs in a westerly direction from Jake Wood's place to Topango Canyon and Redrock Canyon. About a mile. From that point I put in half a dozen yellow dots indicating a partial connection between the two. With reference to the yellow mark just north of the city of Santa Monica, north of Santa Monica Canon I indicated the boulevard through Soldiers' Home to Los Angeles which is directly east of Soldiers' Home.

1555 From that point to Los Angeles, is about ten miles. I don't know exactly how far it is from the point where the state highway ends on the map at a point just east of Encino to Los Angeles. I think on an air line about 12 miles. From that point to Hollywood is about eleven miles. I have also indicated the Los Alisos proposed road in red, running from Lechuza beach at Lechuza canyon in a northwesterly and then
1556 northerly direction, up to the north boundary line of the Malibu Ranch. Also what has been termed in this case as the beach road, running from the junction point of the Los Alisos road north of what has been termed the main road in a southerly direction and then southeasterly to a point on the Pacific ocean. I have also lettered a canon to the west of what is lettered here as Nicolas canon. I have lettered the other as Nicolas canon because that is the true loca-
1557 tion of Nicolas canyon and will at some opportune time rewrite the old word Nicolas and call it Los Alisos. At the court's suggestion, that is. There was one other mark that you asked me. Where Camarillo was and I have indicated here up near the end, or stopping point, what is shown as the state highway, that is just at the top of the map, on an air line, the distance from that point to Yerba Buena settlement is about 9⅜ miles.

Cross-Examination

By Mr. Burnell:

The reason I put that air line distance was because air line distance had been referred to before. I don't know what the distance would be by public highway. I could not say whether, as a matter of fact, there is no public highway by which the people in Yerba Buena can reach Camarillo or any other point at the present time. I have not indicated all the highway in yellow and all the roads by which the so-called settlers can gain access to the main traveled roads. I have indicated some of the ways that they have traveled and can and do travel. I do not know of any public highway that leads to or from Yerba Buena settlement.

Q. Now, the lines that you have indicated on the map by heavy red dots, leading to and from Yerba Buena settlement, are not roads, are they, either public or private, in the sense of being used for vehicles? A. I believe some portions of them are roads that vehicles can use. The rest are trails.

Q. Are there any of those lines over which a vehicle could get to or from the Yerba Buena settlement, either to or from any public highway? A. They could, I believe, to the highways that Mr. Joyner has referred to as legal highways.

Q. Will you point out on the map, please,

1561 what roads persons in Yerba Buena settlement, desiring to get out of that settlement and on to any public highway could travel over with an ordinary team in order to leave Yerba Buena settlement and get to the highway? A. This way here. (Indicating on map.) Starting from the center of Yerba Buena Canyon, which is the Yerba Buena settlement, which is, I believe, Section 10, thence in a southwesterly direction over through the northern part of Section 19, then
1562 into the Decker Plateau and on to the Charley Decker road and to the state highway at Triunfo.

By Mr. Burnell:

On the map a part of that road is marked with a large red dot. I think it is a road, although I am not sure just how far it may run. I think it is a road. When I was up there, and looking in that direction, I saw a roadway going that way.
1563 I did not follow it. I have never been over it. All I know about it is from my observation of the engineers' map. The maps show an existing road into or out of the Yerba Buena settlement. (Witness indicates on map): I mean a roadway such as the people living in those mountains use to haul out the loads that they usually haul. I think it is not a fact that the people of Yerba Buena have to pack all their supplies in by horseback all of the way. They may, perhaps, a part of the way, some of them.

1564 Besides, the persons whose homes are indicated by the crosses and as to whom I have testified this morning, who own property or reside in the mountains and canyons immediately north of the Malibu Ranch, I know of others who own property there. Many of them only go there perhaps once a year, in the hunting season, and those people that I have indicated actually live there the greater part of the year. The various
1565 Kincaid families own property there, in those precipitous mountains and that mountainous country here east of Trancas canyon, between Trancas and Dume. I omitted putting a cross over their residences because I don't believe they live there. I know they own property there. I don't know how many families. There may be eleven Kincaid families that own property in there; I don't know. I do not know that there are at least that many. I think there is more
1566 than one family.

Mr. Burnell: Now, Mr. Scotton, calling your attention on the map to a designation here of Romera canon. Is that what has been referred to as Ramirez canon? A. Yes, sir.

Q. How far, if you know, does that north boundary of the Malibu Ranch lie above the proposed road that you have indicated, which is referred to as the main road, how far north of that road is the northerly boundary, at Ramirez canon? A. Over a mile. The boundary

of the Rindge Ranch at Latigo canon is about three-quarters of a mile north. It would seem that as shown on the map the distance is much less at Latigo canon than the distance between the proposed road at Ramirez canon, but I think I am a little high on the red line. I think the maps show that the nearest point is a little in excess of three-quarters of a mile. My location of the red line on the map is only approximate and it is a little high around Latigo. There are no other inaccuracies that I know of on the map, other than it is an approximate. The northern boundary of the ranch from the proposed main Malibu road at Escondido canon is a little over three-quarters of a mile. The northern boundary of the Malibu Ranch from the proposed Malibu road at Solstice canon is about three-quarters of a mile. The county survey is 1.9 miles from the Los Alisos bridge to the north boundary of the Malibu Ranch. That is about the same distance at Lachusa canon. The name of the canon that is shown on the map here between Trancas canon and Lechusa canon is Encinal canon. The boundary line of the Rindge Ranch from the proposed road where Encinal canon crosses the road is about a mile. The distance between the northerly boundary of the ranch and the proposed road at Marie canon is about a mile, and Puerco canon a little less than a mile; and

1570 Corral canon a little less than a mile. At Dry Canon the distance is about three-quarters of a mile. I mentioned the name of C. S. Herron and Fred Vaughn and Melvin Bodle. That is not Joe Bodle; it is Melvin. I don't know whether it is the same family but if they are it is part of the 160 there, they are all near. I have indicated the Joe Bodle place; I don't know whether the other Bodle place is near that. I do not know the name Crocker Auld. I know
1571 the name William Kelso; I think such a party is up there; I don't know. I do not know where the place is other than by reference to the map; the map I refer to is a map that has been made by one of the deputy assessors of Los Angeles county, upon which was marked the places where the people that lived in those mountains had their places. I think that Kelso's name was on that map. I think it is right around
1572 here in Section 17. That is what I refer to in some of my testimony as the Decker country. He has 160 acres there. I do not know Walter Kielhofer or Richard Mason. I think I mentioned Andrew Humphrey this morning. I do not know C. L. Wiess or any one named Klotzley. Keppler's, I know. They live on the upper half of Section 19. I didn't make any cross for the Kepplers. I didn't think about that at that time, I guess. I think that Keppler's name was on my list, but I marked on there the names

1573 of the people that this deputy assessor gave me as people who lived on their properties in the Decker plateau country. That is my reason for marking those on that I did mark, and also my reason for not marking other names that you have mentioned. I have heard of the name Sidney Melvin or Marvin. I think it is the same place where Keppler is, the same property. I made no mark for them. I did not mention the
1574 name of E. B. Parks this morning. I know of such a man. I don't know where Parks lives, except in Venice. I don't know any one of that name owning property north of the Malibu Ranch. I know a man by the name of Malloy who owns property with C. W. Middlecoff, a hardware man of Santa Monica, a member of the Santa Monica Chamber of Commerce, who told me that he had a place up in Section 3, and that he went there once a year hunting. The
1575 160 acres that Malloy and Middlecoff own is in Section 3, Township 1 South, Range 19 West, and the section through which the Charley Decker road goes. He simply told me that he only went there once a year hunting. He did not tell me that he didn't go there oftener because of the fact that there was no good road he could travel to get there. He has a road right up to his place and an iron gate across the road as you enter the place. I do not know Mrs. Shirley or E. M. Smashey. I don't know where Mrs.

1576 McClellan's property is. I do not know whether she lives up there, but I think there is such a party that does own property in that plateau somewhere. I know Frank See's place; that is not in the Decker country. I think that is east of Escondido. I don't know where the McClellan place is. I did not make any mark to show where the Malloy and Middlecoff place is because they do not live there. I know of Charles
1577 Foose. I think he has a place up there, but I don't know where it is. I do not know Frank Westgate. The only Moffet I know is dead. I do not know any property owned by the Moffet estate, or anyone of that name, or Ed Lewis; or Lawler or anyone of that name. I don't know whether there is a Jim Decker in addition to the Charlie Decker and Marion Decker. Joe Densmore,—I do not know that name. The road shown in yellow on the map leading through the
1578 Ventura county line through the Russell ranch, I would judge is a public road; at least a legal public road. I don't know because the county has spent money on it. I know the Mathieson ranch and Russell ranch people keep unlocked gates, with signs to close them. They are ordinarily kept closed. They have a lot of stock on the ranch. Where the road goes from the Ventura county line in a northerly direction, through the Russell ranch and out to the state highway at Triunfo postoffice is comparatively

1579 level country. There is a little stretch from the Ventura county line down to the Little Mathieson lake that is similar to practically all of the country in these mountains, that would require some side hill road work; but from the Ventura county line in a northerly direction there are no heavy grades at all. In places it is the same sort of land as the Malibu Ranch. There are different kinds of land. In a general way
1580 it is the same kind of land on the Russell ranch as the Malibu Ranch.

Q. Now, I will ask you to state, if you will, the distance between the northerly line of the Malibu Ranch, as shown by the purple line on the map, Defendant's Exhibit 6, and the road that is shown in yellow extending from the westerly branch of the Topango canon—what I call the old Topango canon road—in a general westerly direction through the circle marked
1581 "Cornell," and thence by the road shown in yellow to Triunfo postoffice. I am just taking the different points. All my questions relate to the distance between the road indicated in the last question and the northerly boundary line and different points. Now, if you will give us that distance in a correct line between Triunfo postoffice, running south to the boundary line of the Rindge ranch. A. That is about 8 miles, in a direct air line. The distance from Cornell postoffice is five miles. The distance directly north

1582 of where Trancas canon crosses to the road indicated in yellow, just below the word "Russell" is about three miles, to the Nigger Hill road; four miles from there to the road which runs through Russell Valley and seven miles in all; air line again. The distance from the road indicated at Latigo canon is about four miles; at Marie canon a little less than four miles; and at Malibu canon, just northeast, to the Malibu
1583 line, a little over two miles. This same road passes through Mathieson ranch; those are separate ranches. Portions of the land on Mathieson ranch, through which the road passes, is the same character as on the Rindge Ranch, and others are not. In general it is flat land and hilly land. There is more mountainous land on the Malibu, the peaks are more rugged and the back country is more rugged. On the occasion when I went up the road toward the Decker
1584 place in the Pierce Arrow as I indicated this morning, it was indicated by a red cross just below the word "Cornell." We went in from Triunfo postoffice and down through here and then up into Sierra canon, up to Hot Springs, and the road continued on from there and we turned from Hot Springs and came out at Cornell and then in a southwesterly direction and went out south road to the highway, at Vejo. The purpose of that trip was that Supervisor McClellan came to the Rindge Company's of-

1585 fice in the early part of his office career as a supervisor, and speaking about the road conditions in the Malibu mountains, indicated that if a road could be gotten through about the middle of the mountains, running from some point around Topanga Canyon, Topanga postoffice, in a generally western direction up into the Decker country, and tapping Ventura county, such a road would relieve the road contro-
1586 versy which had been in the courts for ten years and following up that thought I went out into that country, after having first examined the topographical map from Los Angeles to Ventura, and in looking at the map, I saw what semed to be a very natural way down Triunfo Canyon, over Russell Valley, in a southwesterly direction, to a point known as Mount Olive school house, and then from there to Jake Wood's place on the old Topanga road, down
1587 to Topanga postoffice, and then continuing on the Topanga Canyon road—

Mr. Newby: You said southwest. You mean southeast? A. Yes. Also connecting up with the Triunfo road, a roadway that I have traveled over and by running from Cornell, up Sierra Canon, first in a southwesterly direction and then in a general westerly direction passing Nigger Hill grade, and up into the Decker plateau, and continuing over into the Ventura settlement of Yerba Buena. After I examined the

1588 map I went over the country in a Pierce-Arrow
66, a very large car, starting from Los Angeles
I went to Santa Monica and went along the
beach to Topanga Canyon up the Topanga Can-
yon road to the Topanga postoffice, and up the
old road to Jake Wood's and over in a
westerly direction from Jake Woods up to
Topanga Glen, over through the subdivision
of Ruiz, in Red Rock Canyon, and about a
1589 mile from Jake Wood's, and then walked up
Red Rock Canyon to a trail, and along a
trail which led over the saddle that separates
Red Rock Canyon and Topanga, from the Cold
Creek country, and there saw a possibility of a
little short stretch of road which would connect
Topanga country with the Triunfo country.
Then I turned from Red Rock and went out on
the old Topanga road to the junction of Dry
Creek road, which leads from there down to
1590 Mount Olive school house, and from there, in
a westerly direction to a vineyard, the Leon
vineyard, I believe it is, and then follows the
old roadway following it with my eye, being
the roadway as marked on the ground, and then
returned, and went out the way I came in, out
to Calabassas, and then westerly on the state
highway to a point where it turns southerly—no,
westerly—pardon me—southerly, to go to the
Crags Country Club, and arriving at Stoke's
place, we went in the automobile about a mile, in

1591 an easterly direction, and then walked on the road and looked back over to the Mount Olive school house, along the roadway as is feasible on the ground. Returning to the Stokes place we went down over to the Crags Country Club and we could not get in any further because the old traveled way through the Crags Country Club has been submerged under an artificial lake. We therefore returned to the state high-
1592 way and continued in a westerly direction to Vejo on the state highway at one corner of the Las Virgenes ranch. We went in to the junction of the Triunfo Creek and Vejo Creek and then continued in a westerly direction and northwesterly direction to the Triunfo Valley, which is a broad valley, at the junction of Vejo Creek it must be a couple of hundred feet wide and as you leave the junction, it widens out to about 800 feet, and continued past to Cornell, and then
1593 out and up—out to the state highway at Triunfo postoffice, the entire distance from Triunfo postoffice back through the Triunfo country and over to the Mount Olive school house is through country that the grades, in my judgment, would not be much more than 3 or 4 per cent. I think that that explains my reason for going into that country.

1594 Afternoon Session, 2 o'clock P. M.

(Stipulated that the jury is present.)

GEORGE RILEY,

a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My name is George Riley. I live at Triunfo, Ventura county. I live on the Protrero ranch.
1595 That is the ranch commonly known as the Mathieson ranch and adjoins the Russell ranch, west of the Russell ranch. My business with reference to that ranch is manager. I have been such about three months; prior to that I was superintendent for about 15 months. That was my first connection with the ranch. I have been on the ranch altogether 18 months. There is no store on that ranch. There is not now a
1596 store in that neighborhood, where ordinary supplies are obtained for ranch purposes and things of that kind; nor nearer than Calabassas or Camarillo. There is none at Triunfo, just a few little things; but at Calabassas and Camarillo there are general stores. While I have been there, you could get a few things at Triunfo, but not any general merchandise. I am acquainted with some of the people who live up near the Rindge Ranch on what is known as the Decker section of the country. I do not know Charley

1597 Decker. I know Ernest Decker; I don't know exactly when I met him; I know the road commonly referred to as the Decker road from Triunfo up to Decker's place. During the period I have been residing on this ranch I have seen Mr. Ernest Decker using that road for the purpose of carrying supplies. He generally uses a two horse wagon and drives in and out with that. I know a man named Malden up there. He has been making use of that road also, since
1598 I have been there. He uses it for a two horse rig—wagon. I know a family up there by the name of Parks. They use the road also part way, and have while I have been there. They use it probably two miles or three miles on the range south and west from it. They drive over with a rig at times, and sometimes they go part way with a machine and then pack over, sometimes with a horse and wagon and sometimes
1599 with a machine and pack. The way I understand it, they haul to the foot of the trail and then pack over Triunfo Pass. I know a man by the name of Humphrey up there. I don't know whether he drives; I have never seen him on the road, only have met him at the store. I know a man by the name of Vaughan. He uses the road also; he travels it with a team, a two horse wagon. There is a party stopping near Vaughan's who has an automobile up in that section and uses the road, but I can't recall his

1600 name just now. He has a Ford. Besides those I have named individually that use that road with teams, horse and wagon, I think Mrs. Charley Decker drives, and Mrs. Haney. Both of those use the wagon road with a horse and wagon carrying supplies in and out. I know a man by the name of Peter F. Roller up there. I have never seen him go over the road only horseback. I do not know a family up there by the
1601 name of Bodle. I have seen people other than the ones that I know personally using that road, some with wagons and some horseback. I have seen some using machines on the road besides the two I have mentioned. They pass right by my place, in using that road. I know a family by the name of Harren up there. He uses the road, just afoot. He hasn't any stock that I know of. I know a man by the name of Threw. He uses it, driving over it with a two horse
1602 wagon. I know a man by the name of Arthur Auld. He goes over it with a Ford. I have heard the name of William Kelso up in that neighborhood. Louis Berger? No. I know Walter Kielhofer. He uses the road part way. I don't know for sure whether he goes over the grades or not. I do not know a man by the name of C. H. Weiss. I met one Kinkaid. I know the hired man that works for the Kincaids, a one-armed man. I met him several times horseback. I don't recall seeing him using

1603 a wagon. I do not know Mr. Keppler up there, or a Mr. J. A. Stuart, or a Mr. Malloy or Mrs. Shirley, or Mr. Smashey, or Mrs. McClellan, or Chas. Foose, or Frank Westgate, or anyone by the name of Moffet. I have heard of a Decker up there named James Decker, but I don't know personally whether he uses the road. I do not know Joe Densmore. In addition to those I have mentioned I have seen others using the
1604 road with a horse and wagon.

Cross-Examination

By Mr. Burnell:

I have personally been over the Decker road, clear down to the Malibu Ranch.

Mr. Burnell: This map (Defendants' Exhibit 6) is a photographic enlargement of the United States Geological Survey map, or quadrangle, enlarged so far as the large portion is concerned, eight times. It is an exact reproduction so far
1605 as all of the matter that appears on the original map is concerned, but Mr. Scotton, an employe of the Rindge Company, has indicated by yellow lines certain roads and by purple lines the boundary of the Malibu Ranch and by other places in lighter purple the lands owned by Mrs. Rindge or the Rindge interests; by the heavy red dots, ways or trails, leading into and out of what has been referred to as the Yerba Buena settlement, which is indicated by the red circle above Deer Canon. The state highway is the

1606 dark colored line and Mathieson lake is indicated by the large irregular shaped green spot lying just to the left as you face the board, to the west of the Ventura county line indicated by the heavy green line. The road which I am now pointing out from Triunfo postoffice, the line being a yellow line extending down through the Russell ranch and the Mathieson ranch, in a generally southerly direction, directly beside the
1607 "S" in the words "Santa Monica" in Santa Monica mountains, and thence curves in a generally southerly direction down the red "X" with the figure 11, which has been identified by Mr. Scotton as the Marion Decker place. Charles Decker's place is indicated with the red lines, and No. 3, and the place called Nigger Hill, I believe, is right in there (indicating on map). Nigger Hill, I believe, is right in there. Nigger Hill is indicated on the yellow line up here,
1608 on the road in Sierra Canon. Now will you point out the way that you traveled to the Decker place. A. We came over this Decker road as far as—or down in here somewhere, and then down through the bean field toward headquarters. I used a saddle horse. I am familiar with that road. I never went to Charlie Decker's place. I traveled over that road to the Ernest Decker's place in June of this year. I drive an automobile. I wouldn't say that the road I went over to the Ernest Decker place in June

1609 was a road which was passable for automobiles, so far as Ernest Decker's place, because we got off of the road and went alongside of the hills, we left the road in places probably a hundred yards. I could see the road at all times; I would not say that it was practicable for use of automobiles, traveling under their own power. You could get over it part way. All the way to Ernest Decker's place I would not say it was practicable. The road was cut up, the way I
1610 remember, and rutty and rather steep. It was very step, the grades were. I would not say that it was a road over which one team of horses could be driven, going up to Ernest Decker's place, carrying a heavy load, say a load of a couple of tons. That is because of the steepness of the road. I do not think that a ton could be hauled up by a team of horses. I have seen Mr. Auld driving a Ford as far as the Malloy place;
1611 probably a half a mile the other side of the Petrero ranch line. That is above Malloy Hill. When the Ford was driven to that point, as far as I know, it was taken on over to Mr. Vaughan's. I could drive to Mr. Vaughan's place with a Ford. The condition of the road to Vaughan's place is very steep. There were three people in the Ford the day I saw it. They were in it until they were over the steepest place on the Potretro ranch. The Ford traveled under its own power. I don't know about whether I

1612 would say the road to Mr. Vaughan's was a practical road for the driving of automobiles. Mr. Auld goes over there quite regularly with the Ford, not at all times of the year; I have not seen him in there only since spring. I have actually seen Mr. Auld in there with a Ford three or four times during the 18 months I have been connected with the Mathieson ranch. I have never seen him drive up that road with an au-
1613 tomobile or with a Ford in the winter time. I do not know what the grade of Malloy Hill is. The road that is through the Mathieson ranch, when you get to the south line, the county road that runs through the ranch to the south line is rather rough and steep. It is a private road, belongs to the Mathieson ranch. People simply drive through there at the permission of the Mathieson ranch. That same road goes on to the Russell ranch; that is not a private road;
1614 that is a county road through the Russell ranch, and a private road through the Mathieson, part of the way where the Decker road turns out running south. The portion of the road on the map that is a private road is from this point to this point; that is, the line of the Potrero ranch (indicating a portion of the so-called Decker road from the heavy black line just where the road crosses that line near the figures "2076" indicating the elevation, a little bit above the "S" of the word "Santa Monica" in "Santa Monica

Mountains;" thence in a northerly direction crossing the Venutra County line, to a point on the road marked in yellow, running in a general westerly direction, and between the Ventura county line and Mathieson Lake, as delineated by the green markings placed there by Mr. Scotton). That is a private road. When I took this trip past the Ernest Decker place and down on the Malibu Ranch, Mr. George W. Mathieson and Mr. Sprague were with me. The purpose in general of the trip was looking for some cattle. We went on to the Malibu Ranch. The general character of the territory that we tramped over on that portion of the trip during which we were on the Rindge ranch, as compared with the other portion indicated, part of it is mountainous, similar to part of the Potrero land. After you get on the Malibu Ranch, part of it was in beans. Some of it cultivated; there is some on the Mathieson ranch, about similar. The mountainous land on the Potrero ranch is probably a little rockier and steeper, part of it, I would say that in general the character of the country on the east side of the slope of the Santa Monica mountains going north towards the state highway—that the land on that side is some steeper and more mountainous than coming down to the ocean on the Rindge side.

1618 *Redirect Examination*

By Mr. Anderson:

I came down the canyon that is shown on this map (Exhibit 6) just below the Ernest Decker place. After we passed we went through an old gate right below Ernest Decker's place and then we came down the point of a ridge where an old road runs down. That is the way we got on to the Malibu Ranch. With reference to this Malloy Hill that is a very steep grade, one of
1619 the steepest grades on the road. The county of Los Angeles has never done any work on the portion of the road in the Mathieson ranch called private.

Q. As far as that road is concerned, which you say you saw, that Decker road which you say you saw, it could be put into shape, couldn't it, for automobile travel, without much trouble? A. I don't think to follow the tracks the road
1620 is in that it would be very practical. I think they would have to change some little points in it.

A. J. OTIS

(Recalled in behalf of defendants.)

Direct Examination

By Mr. Newby:

I have made an estimate of the cost of fencing the road with four barbed wire fence. I have also estimated the difference between cost of a fence as I estimated before and four

1621 barbed wires. I have the result of my investigation. This is a correct copy. (Producing document.) There are two items of labor and insurance I didn't put in the other copies. This is for a four barbed wire fence. 320 posts to make the posts 16½ feet apart, 30 cts., $96.00; 20 extra posts and braces, these posts to be seven feet long, at 35cts., $7.00; tar and tarring the 340 posts, 10 cts. each, $34.00. Now, labor,
1622 11 cts. per lineal foot, $580.80. 35 lbs. of staples and nails, also the barbed wire, 1515 pounds, 7 cts., $106.00. Now the freight for the wire and the posts and so forth, 9,055 pounds at $6.00 per ton delivered on the job and $2.00 for distributing, $36.22. Those items added together with the additional saving on insurance and on labor, $13.06, makes $873.08. It would be a saving to the owner of ten per cent, $87.30, that makes the—no—that is the overhead—that
1623 makes the total cost, four barbed wire fence as estimated for the job end to end, $960.38. In my opinion that would be the reasonable cost of building a four barbed wire fence on the Malibu Ranch along this proposed highway. I consider that a fair estimate for the cost and the labor per mile, for the entire job. The judge asked me to make an estimate of how much less it would cost to put one barbed wire above the woven wire rather than two. I did that, and I find on the straight fence where it is to be

straight and no difficulty of construction, I find that it amounts to a difference of $40.63 a mile. If you put one wire instead of two there would be a saving of $40.63, that is a part of the fence where it is easily constructed; then where there are curves and the ground is rough it takes a higher price for that fence; I estimated there would be a saving of $63.06 and on the roughest ground about four and a half miles, and I estimated there would be a saving of $119.34 for each mile.

Cross-Examination

By Mr. Vallee:

A four barbed wire fence I estimated the posts 6 and a half feet long as sufficient, for the curves, seven foot long. It would be an advantage to have longer posts to put in where it is necessary to brace the posts; it would go deeper in the ground. In my estimate of the kind of wire to be used I specified four strands genuine Glidden. Genuine Glidden barbed wire is a barbed wire generally used for stock fences; it is the heaviest barbed wire. It weighs 13 4/10 pounds to the lineal foot. That is the heaviest kind of barbed wire made. That is the heaviest I know. It is the wire universally used for stock fences. They do not manufacture a three strand Glidden; not that I know of. They do a two strand. That is the wire which I specified and is called Glidden, two point Glidden. There

1627 are a number of different weights barbed wire. This Glidden barbed wire which weights 13.4 pounds is one; then there is the Lyman barbed wire which is a 4 pound wire and there are others which are painted, having the same weight, and there is the Waukegan barbed wire which weighs about 18 pounds to the foot. Also there is a much lighter wire which only weighs 23 pounds to the foot. I mean a pound will ex-
1628 tend 23 feet of 18 feet or 13.4 feet. There are no other weights of Glidden wire manufactured besides the ones I have specified. There is lighter weight, but they are not called Glidden barbed wire. All these wires are manufactured by different companies in different weights. In making the estimate, I have $2.00 per ton for distributing. I did not include the distributing in the labor. I considered that as a part of the bill for hauling. My estimate of the labor is
1629 the actual building of the fence and getting the men forth and to the job. I estimated compensation insurance in this four barbed wire estimate. It is $13.05. The labor estimated for the whole job would estimate 11 cents a lineal foot or $580.80. Compensation insurance on that amount at $2.25 is $13.05. I made a statement that it would be a saving to the owner of 10 per cent and then changed it to mean a difference, in the overhead, of 10 per cent, by saying that it would be a saving. I mean that in

1630 this other figure here, I made a mistake, in these other estimates it is of a woven wire fence, and the judge asked me—with two barbed wires above—and the judge asked me to submit a figure with the one barbed wire only, and in doing so there is a saving there of labor, and barbed wire, and of course on the original estimate the owner would save the 10 per cent, which would add that much. That is what I meant by 10 per cent. saving. The second sheet
1631 is an estimate between the price of the woven wire fence with two barbed wires, as I submitted here, and with one barbed wire. I figure this 10 per cent, $3.78, because we save the owner $37.85 on these items and in the original estimate we charged 10 per cent. profit and overhead, consequently if we save the owner that much we must give him credit for the 10 per cent., otherwise he would be paying it just the
1632 same.

Redirect Examintion

By Mr. Newby:

The Glidden wire on which I placed my estimate is the quality of wire that I regard as necessary for the purpose of fencing that ranch. An inferior quality would not answer the purpose, in my opinion. It is too light.

1633 F. B. SCOTTON,

recalled.

Cross-Examination (Resumed)

By Mr. Burnell:

I was telling this morning about my trip in the Pierce-Arrow. I traveled over the Topanga Canyon to Jack Woods' place. On that trip I took the road that leaves the old Topanga canon road and then runs westerly and then
1634 southerly, as you are indicating with the pointer, and brings you down to a point immediately above the word "creek." That was called the Dry Canyon road. And then I went westerly. Then instead of taking the turn south and going over in the direction of Sheriff Cline's place, I retraced my steps to come out on the state highway and to get in from the Stokes end. I then retraced my steps, so to speak, and went back up the old Calabassas road into Calabassas, and
1635 along the state highway, and then back the next road shown in yellow on that map that runs through Los Cahuengas and down to the Stokes place. Then from there I went east about a mile. But I didn't travel the intervening distance with a machine between the property east of the point that I reached in the vicinity of the word "Creek," the farthest point west, and the farthest point east that I reached from Stokes, because that intervening distance is over an old traveled way that is not now in use, but is what

1636 I was thinking of at that time as the most logical position for a through road. It was not at that time when I went over it a road that was in condition to drive an automobile over. Then I came back to Stokes. I did not go back to the highway again; I continued westerly into the Crags Country Club, about where the word "Goat Butte" is. From there I returned and out the Las Virgenes road and along the state
1637 highway to Vejo, then south to the junction of the Vejo and Triunfo; then westerly and northerly towards Cornell. From Cornell on, that first trip I was telling about, I went in a northwesterly direction up to the Triunfo postoffice, and to the Ventura highway. In each case after reaching some point on the road that is shown on the yellow mark indicating the road, which is shown on the map, that extends from the old Topanga Canyon road in a general westerly di-
1638 rection, each time I went back to the state highway before I went to the next point. When I finally reached the point marked "X" in "Sierra Canyon," the farthest point reached by the Pierce-Arrow, I turned around and went back on that trip. The machine traveled on its own power the whole of that trip. I didn't have to be towed at any point. I didn't go any farther when I reached the point marked "X", which was the farthest point we went, because we had a pretty cold hour, starting early in the morning

1639 and getting home late at night, to cover the distance from Los Angeles to Triunfo postoffice and those side trips, and to get out. We discussed the various points along the way, so at the time I reached the Hot Springs we did not go any farther. It was not because the machine could not be driven any farther that we ceased to go on. I don't know just how much farther a machine could go forward toward the Decker
1640 place, but I do know that the Brewster road leads in a southerly direction for several miles. That is the road that runs from Cornell directly south, down to the Nigger Hill right about there (indicating). Then over to your east; then south in that direction, the old Brewster road. I have never traveled over that with this Pierce Arrow, nor with any other automobile. That is not an automobile road. That is a wagon road. This Pierce Arrow machine is the same
1641 one that I had when we were out with the jury the other day, one of the two. A large gray car. It is a six. I don't know the horse power. All Pierce Arrows are powerful. It is not an unusually powerful car. I think a Ford will go almost any place it will go. I had been out with the Pierce Arrow before. The other cars that were used on this trip to the ranch with the jury, I think were six-cylinder Studebakers. I don't know what horse-power they were; I imagine they are less than the Pierce Arrow, although

1642 they went wherever we went with the Pierce Arrow on this particular trip. I think we traveled over several grades that were steeper than the Nigger Hill grade, and steeper than the Malloy grade. As we went down into the canon west of Los Alisos that was a short grade, I think it is in excess of a hundred feet. At Malloy Hill there are a number of grades, the number of stretches of grades, and resting
1643 points at the tops of them. The longest stretch of steep grade on the Malloy Hill is fifty or a hundred feet; I think not more than that. The Nigger Hill grade would be longer. I am not in a position to state exactly how long. In giving the various distances between the different points, for instance such place as Camarillo and Oxnard and Hueneme that I give the distance of, that was based upon actual measurements that I made from scale measurements on the
1644 topographical maps. No measurements on the ground in an air line or by the road. I had no surveys made. Some of the roads in the Triunfo I have marked off with a tape or something of that sort. I also know the surveyed distance by the county from the Malibu Ranch line to Triunfo postoffice; I mean the county survey of what we have been terming as the Charlie Decker road. I have inspected that profile map and other maps in the county surveyor's office and have taken off the distances and grades and ele-

1645 vations. It is the survey of the road that exists there now in places, and also as to the portion that a previous witness testified to that would undoubtedly have to be improved somewhat to make it a good first-class automobile road.

Redirect Examination

By Mr. Anderson:

The Pierce Arrow car that I have been asked about is much heavier than a Ford and much larger. I made some other air line measure-
1646 ments since the last adjournment between Friday and this morning, but I did not put them on the map. I just simply put a light pencil line that might be traced. I found the distance from the center of that circle there at Little Sycamore Canyon, to the town of Hueneme, as shown on that map to be 14 miles. The town of Hueneme is a harbor city on the Pacific ocean. I found the air line distance from the same point within
1647 the center of the circle to the town of Oxnard to be 14½ miles. Also 18 miles to Santa Paula. Santa Paula does not appear on the map; it is just above Oxnard. 7½ miles to Newberry Park. I am using a topographical map of the section from Los Angeles to Ventura. A government topographical map, the one on which I made the measurements. 5½ miles to the store at Mathieson Village, or Mathieson ranch buildings. 9½ miles to Triunfo postoffice; 27½ miles to Santa Monica. I think we mentioned

1648 the 9⅜ miles from Camarillo. Those are all I measured.

Mr. Anderson: Now, if the court please, and gentlemen, I am going to take up another line of examination with Mr. Scotton. It is not redirect, but it deals with the actual condition on the ground.

By Mr. Anderson:

I am thoroughly familiar with the Malibu
1649 Ranch and every portion of it—very much so, I think, and I have been over this entire proposed right of way for these three roads, and have followed the right of way of the main road from Las Flores Canyon on the east to the Ventura county line on the west, and I also noticed the various objects over and through which that right of way passes and the general nature of the country. Commencing at Las Flores canyon, from there to the point on the map indi-
1650 cated Malibu Creek, before the road takes a dip down, which is Sweet Water Canyon just east of Malibu wharf and warehouse, and the nature of the country where the right of way runs, is comparatively flat, level country and soil. The right of way between those points runs, roughly, about 100 to 150 feet from the ocean. That section of the ranch is not yet under cultivation in any way. It is at present used for grazing sheep and cattle, principally sheep. Sweet Water Canyon is where I have written the words

"Sweet Water Canyon" and Winter Canyon is where I have written the words "Winter Canyon." The proposed right of way from Sweet Water Canyon to Winter Canyon commences at Sweet Water Canyon and running from there pretty near to Malibu Canyon, the mesa or bluff comes down fairly close to the ocean and just between the bluff and the ocean at or just west of Sweet Water Canyon, the Rindge Co. has a large galvanized warehouse with spur tracks from the railroad on the south side of the warehouse and other tracks running out on Malibu wharf just west of the warehouse. This right of way passes through or along the right of way of the railroad and those spur tracks, up to or beyond the wharf and then continues around the point of the bluff or mesa land and just east of Malibu lake which is at the point here, which runs out into the ocean. Before you get that far, there is a small house commonly known as the Gate house, also a fence and gate at that point. That right of way takes in both the gate and the house. After we pass the point that I have last described, which is where the road goes from that bluff, at the entrance to Malibu canyon, the road turns to the north and runs for several hundred feet and passes through a round cattle corral. The road takes about half of that cattle corral. That corral is about 80 or 90 feet in diameter. It is a circle. The fence is

1654 of heavy posts and heavy side boarding to hold back the cattle. Leaving the round corral the road takes in a bend to the left and the west and crosses Malibu Creek, then through some cultivated land. It has had crops of potatoes and corn growing upon it, and then it continues over the cement pipes irrigation system into the bean field—simply crosses the pipes. I don't know whether there was an excavation there or not. The pipe where it crosses is a 16-inch pipe.
1655 Then it goes on into the bean field, then goes across the flat about half a mile. From Winter to Marie canyon the road runs half way on the present roadway two or three hundred feet, to the bridge west of Winter Canyon. That portion of the road does not run through any cultivated land from Winter Canyon to the bridge but from the bridge just west of Winter Canyon to Marie. The road goes in a westerly direction
1656 over the mesa to Marie, and on that land are beans. For a distance of six or seven hundred feet the road runs through the beans. The land I have been describing up to the present moment is the M. K. Rindge portion. From there on it is the Rindge Company's. In the M. K. Rindge portion there are 1,846 acres, more or less. The greatest distance from the ocean, of any point on the road, on the M. K. Rindge portion, is about half a mile; that is where it crosses Malibu flat, and also it goes some distance inland at

Marie Canyon as indicated on the map. As you leave Marie Canyon you go up on the mesa land, between Marie and Puerco; that is beans—cultivated land, where the road goes through. I am somewhat familiar with the extent of these various patches. I have a map of the true survey of all of them. Offhand, in that Winter Canyon mesa, between Winter and Marie, I would say there was 9 acres. Right in the Malibu flat there is 200 acres. That is where the road runs entirely in beans. The road does not run into our lemon orchard, but we have other cultivated land above that. The nature, generally, of the cultivation in there is intensive, beans, alfalfa, corn, lemons, potatoes, all kinds of vegetables, between three and four hundred acres. On the mesa between Winter and Marie there is about 90 acres in beans. In the stretch between Marie and Puerco there is about 20 acres in beans and the road runs along the front portion of it. The distance of the road there is about half a mile; then between Puerco and Corral Canyon about two-thirds of the distance is across cultivated bean land. The entire distance is a little over one-half mile. The remaining one-third is outside of the cultivated land, pasture. From Corral to Sosto Canyon the road turns to the northwest in Sosto Canyon. It is called Solstice also. That is the one referred to as Sosto. Dry Canyon goes over the other way. Sosto comes down

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1660 to the ocean. I put the word "Sosto" there to indicate it so we will have it on the map. From Corral to Sosto it runs on the front portion of a little mesa land that is between Corral and Sosto. That is not yet cultivated. That distance is about a quarter of a mile, a little over a quarter of a mile. At Sosto it goes back into the mountains, into the canyon, along the steep west slope of Sosto Canyon. As the road goes
1661 into Sosto Canyon it continues along on the west steep bank and is quite regular, although there are many wild oak trees and trees of other varieties that this right of way passes through. It traverses along that bank about a quarter of a mile and then goes over a ridge into Latigo Canyon, and traverses from that point to Latigo Canyon on a steep side hill. There is no cultivated land there. Then it goes up a sharp draw. It goes up on the south side of the draw,
1662 which is a portion of Latigo Canyon and goes over a saddle into Escondido Canyon and traverses along Escondido Canyon on the bed of the canyon, somewhat, but there are many large, wild oak trees and other varieties along that right of way and the cut and fill portion for the additions to the main portion of the highway. The cut and fill portions take more than the 40 foot right of way, that is in addition to the 40 foot right of way. As you leave Escondido canyon you go over a ridge on to rolling land back

of the flat mesa land, lying between Escondido and Ramirez Canyon, the point where we strike that rolling land is about there (indicating). Just east of where the "I" is in this word "Malibu"—continuing in a generally southwesterly direction to a point beneath the "I" in the word "Malibu" at which point is a tented enclosure, which is termed on the county survey map as marsh land. The right of way passes through that. The fence there is just common fence to keep the stock out of the marsh. The size of that place marked marsh land, where the road runs through it, is 50 by 100 feet. Before you get to the marsh land there is a short stretch of cultivated land to the east of it and as you leave the marshy spot there is cultivated land all the way to Ramirez. From about the point of the letter "I" in the word "Malibu" all to Ramirez Canyon is cultivated land. The nature of the cultivation there is beans and barley. Through that the proposed right of way runs for a little over half a mile; and when you come to Ramirez Canyon the road comes out of the bean field and into the canyon. Nine-tenths of that is beans. There are some ravines intervening there, of course, which are not cultivated. After leaving the bean field at the east of Ramirez Canyon, the roadway proceeds in a northerly direction down into Ramirez Canyon for a distance of about several hundred feet, and then across

1666 the canyon and comes up to the mesa land on the west side of Ramirez Canyon at a point about 200 feet north of the railroad trestle. The railroad trestle is near the mouth of Ramirez Canyon. The right of way first goes down into Ramirez Canyon and goes up on the west side and is at present occupied by numerous live oak trees. As you enter the bean field at the top of the canyon there on the west of Ramirez, you follow the present roadway almost entirely; that
1667 is, the present ranch roadway across Dume mesa. Sometimes it is on the roadway, sometimes 20 or 50 feet to one side or the other, but it meanders back and forth over the present right of way. In Walnut Canyon the present ranch roadway is on the east side of the canyon most of the way, whereas the right of way is over on the west side of the canyon. On the map (Exhibit 6) that canyon is about under
1668 the "L" in "Malibu" (witness marks on map) and that is known as "Walnut Canyon." The present wagon road runs down the easterly slope of that canyon, and the proposed road goes down the west of it, crosses the canyon, that is, until you get about half way up in the canyon. Then the present roadway crosses over to the westerly side of Walnut Canyon. From the point from the west side of Ramirez Canyon until you get to Walnut Canyon, the land that the right of way passes over is cultivated land,

1669 at the present time, cultivated to barley and oats. That distance, approximately, is about three-quarters of a mile. And then passing that, after you come out of Walnut Canyon, from there on to the east side of Dume Canyon, or Zuma, it passes through cultivated lands that are now growing barley and oats, for a distance of about half a mile. As you leave the cultivated land on the mesa on the east side of Zuma Canyon, the right of way runs in a southwesterly direc-
1670 tion down into the bottom of Zuma Canyon, which is a broad, level canyon running from the ocean back about a mile and a half. This point right here directly under the letter "L" in "Malibu" is the point at about which the right of way reaches the bottom of the canyon near the ranch buildings. Then the road continues down the present ranch road for about 700 feet and then makes a turn and goes in a northwesterly direc-
1671 tion across an alfalfa field. Across that is about 400 feet. After you leave the alfalfa field, at the east bank of the Zuma Canyon, we pass through that 10-inch pipe line, of the water system—pass through it, along it, and over it for a distance of about a couple of hundred feet—a 10 inch steel pipe line. That is the main pipe line of the water system, delivering water from the 75 horse-power pumping plant which we have up in the canyon about a half a mile, and used for irrigating one hundred acres of alfalfa in

Zuma Canyon. When you get to the west bank of Zuma Canyon the right of way takes in along the pipe line to a cement standpipe in the irrigating system and proceeds in a southwesterly direction along the line of this cement irrigation system, in which distance there are three cement standpipes. The first one taken in is about four feet high, and four feet square. The second standpipe is about 9 feet high and 3½ or 4 feet square and the third standpipe is about 4 or 5 feet high and 3½ or 4 feet square. In Zuma Canyon flat there are about one hundred fifty acres of land, with a slight drop to the ocean, and it is quite thickly covered with immense sycamore trees and other trees, and this right of way passes right through a number of those large sycamore trees. The distance of the right of way through there is a couple of hundred feet. I don't know exactly what it would cost to remove that pipe line, the standpipes, and place them in other locations. I know the character of the country and about where the pipe line would have to be put in order to cover the land for irrigation to get it out of the right of way, and that would necessitate undoubtedly heightening the boxes further up the hill and it might necessitate it being changed considerably. The irrigation system for the irrigation of the canyon was surveyed by competent engineers and laid out in its present

location at a cost of about twenty-five thousand dollars and to make any changes in any portion of that system might necessitate large changes in the balance of the system. There is nothing else that necessitates changes but fences and alfalfa fields. Passing on from that point after it goes above the water system, the road makes a turn and goes up a draw and across the land that is in cultivation at the present time with beans, to a certain extent. There are little ravines which are not cultivated. Through several hundred feet of cultivated land, that brings it to a canyon termed Hog Flat. From Hog Flat the right of way then goes down on the beach. I have indicated on the map the "Hog Flat." In that distance from Hog Flat to the beach, the land is cultivated in beans. The distance through that flat is several hundred feet; then the right of way goes along the base of the bluff for about—a little over half a mile. In that distance of one-half a mile, it is approximately 150 feet from the high tide line. It then reaches the east edge of Trancas canyon at the mouth, and then goes over the top on the cultivated land for a distance of a hundred feet or so. The nature of the cultivation there is beans. Then it crosses the canyon, just south of the windmill and I think the right of way at that point evaded the windmill. It does not take in any personal property in that canyon—yes it

1678 does, I think it goes across some watering troughs which are supplied from the tank; one long string, about 75 feet long, built of wood. After you get to the westerly bank of Trancas, the right of way then proceeds in a westerly direction to the base of the bluff and proceeds along the base of the bluff from Trancas canyon to what has been termed Steep Hill Canyon.

Q. Will you put that on the map.

1679 (Witness draws on map, Exhibit 6.)

Now, that land under the bluff there is not cultivated? A. No, sir.

(Continuing.) That is about the same relative distance from the ocean that the other stretch east of the Trancas is. The next canyon west of Steep Hill is Encinal.

Q. Indicate that on the map. (Witness draws on map, Exhibit 6.)

(Continuing.) The right of way crosses the 1680 mouth of Steep Hill canyon, and for a distance of about two or three hundred feet is along the base of the bluff, and when it gets up to the top of the mesa land, which is at the present time under cultivation to beans, then it runs through about the middle of the beanfield over to Encinal canyon. The distance from Steep Hill through the bean field to Encinal is a little over half a mile. From Encinal it traverses part through the center of the upper half of the bean fields all the way along to Lechusa. There are

a number of small canyons in between Lechusa and Encinal, but the right of way for the most part is in the cultivated areas. That distance is a little over a mile. With reference to the present private road across that particular mesa the right of way at a few places follows it, and other places north of it, and most of the distance it is south of it. At Lechusa Canyon there is a bridge, a ranch bridge, and northeast of it is a reservoir used to irrigate the alfalfa land to the south of the present roadway; and at the bridge on the westerly end of the Lechusa bridge, the right of way of the main road runs a little southwesterly across the alfalfa field to a corner in a fence—an obtuse corner in a fence that encloses the alfalfa field. Of the proposed right of way in that alfalfa field the distance is about an eighth of a mile. The distance from the northerly boundary of the proposed right of way to the northerly edge of the alfalfa field is about 50 feet, or a little more; about 75 feet. You then reach a point there at the Los Alisos canyon. That is the point where the two smaller roads reach the main road in that neighborhood; the one from the north and the one from the beach. From Little Alisos to the real Nicolas Canyon, the name of which appears on there in my own handwriting, the right of way passes through cultivated lands, cultivated to beans, part of the way on the present ranch road, most of the way

1684 south of it. The distance through that bean field is a little over three-quarters of a mile. From Nicolas canyon the right of way is in the cultivated land nearly all the way to the canyon of the Arroyo Sequit. From east of the bank of the Arroyo Sequit the distance from the western bank of Nicolas is about a mile and a quarter. The present private road there with reference to the proposed right of way is mostly
1685 above the proposed right of way. After you reach the Arroyo Sequit, the road from the east bank of the Sequit crosses bottom lands, on the Sequit. In that area there are a number of large sycamore trees and others in that right of way, and the roadway then bends to the southwest across land that has not recently been cultivated, and continues along to the Ventura county line. There is a portion of it in that last territory that I have described that is practically
1686 down under the bluff. Commencing at the west line of the ranch and going easterly toward Sequit point, there is about six or seven hundred feet at the base of the bluff. With reference to this proposed right of way the private ranch road crosses the Ventura line about 300 feet north of it. There is no road of any kind whatever extending from the west end of the proposed right of way and connected with the west end of the proposed right of way to the west end of the Rindge property. [illegible] is no road

1687 whatever from the Ventura line to the west end of the ranch except the private road that I have referred to. Coming back to what we call the canyon road, the Los Alisos road, I have been up the proposed right of way to the ranch line. Commencing at the point where it intersects the main road, the Los Alisos road, so-called, commences that the westerly end of the Malibu Ranch bridge at Lechusa canyon and proceeds
1688 along the Malibu Ranch road, private road, for a short distance and then commences to skirt the side hills going in a northerly and westerly direction,—the side hills of the mountains, side of the mountains, along the east bank of Los Alisos Canyon, and continued along the east bank of Los Alisos Canyon practically all the way, I believe,—all the way, climbing around and taking double switchbacks to get up to the Malibu Ranch line, the distance being, according
1689 to the survey, one and nine-tenths miles, rising something over 1,000 feet in that one and nine-tenths miles. The nature of the country, in a general way, is rough pasture land; rough mountain pasture land, in places very rocky and very steep and precipitous. I have a photograph I took of the exact point where the county survey for Los Alisos road ends on the north boundary line of Malibu Ranch. That is a correct representation of what it purports to show. The writing on there states that the horseman in

1690 the picture is standing at the white flag which is at the center line of Los Alisos road as surveyed by the county surveyor of Los Angeles county. That is the north end of the proposed road.

(Whereupon the photograph referred to was admitted in evidence and marked Defendants' Exhibt 7, and is one of the exhibits to be certified to by the clerk.)

1691 This document which I produce is a 3¼ by 4¼ kodak picture of a portion of the Los Alisos road, that particular portion that is viewed by the court and jury while standing at that certain obtuse angle in the fence, at the corner of the alfalfa field at the point where the beach road, so-called, crosses the main road, looking north up Los Alisos Canyon. The rocks which are about a quarter of an inch or half an inch to the left of the horseman in the picture are 1692 the rocks which were looked at by the court and jury at that time, and the horseman in the picture is at one of the flag stakes in the center line of the county survey.

Mr. Anderson: We offer this also as Defendants' Exhibit No. 8.

The Court: It may be admitted.

(This is another of the exhibits to be certified to by the clerk.)

By Mr. Anderson:

(Continuing.) This (main) road, where it passes up through the mountains and across those canyons takes in a considerable amount of foliage. Wherever it goes into the canyons and across the canyons, like Malibu, Zuma, Trancas, and those intervening, there are some magnificent trees, both oak, sycamore and other varieties within the right of way, and the slopes for the cuts and fills. The relative distance or approximate distance from the point where the road runs through the various cultivated land to the point where cultivation ceases, from Ventura county line to the Trancas Canyon would vary from 25 feet to 200 feet. The road could be taken out of the cultivated land by moving it northward for a distance, where some of our present roads are at the present time and others on which construction has been started. From Trancas Canyon over to Zuma Canyon—rather, to Hog Flats, there is an area where there is 100 or 200 feet, which would be on the southerly side of the road and then from Hog Flats there would be several hundred feet on the southerly side and a mile on the north. It runs practically through the field there, and from Zuma to Ramirez it would be about in the center of the cultivated land, about one-third north and one-third south, half a mile north and three-quarters of a mile south. From Ramirez over

1696 to where the roadway goes across the ridge on the westerly end is through the fields, and on the easterly end and the northeasterly end it runs up to the edge of the barley fields and runs across the fields diagonally. There the road would have to be removed north of it to escape the cultivated land, in some places several hundred feet. After it comes out of the mountains at Sosto, to escape the cultivated land, and from
1697 there on to Marie, it will have to be raised. It will have to be moved in a northerly direction from several hundred feet to a quarter of a mile; that would take it to Winter Canyon, and from Winter Canyon to the Malibu flat, a hundred feet to the south or a third of a mile to the north. From Malibu on to Las Flores there is no cultivated land at present. The present road as compared with the proposed right of way from Las Flores to Sweetwater Canyon is en-
1698 tirely within the old right of way, practically so. That distance is about two miles or two and a quarter.

Recross-Examination

By Mr. Burnell:

Upon the Malibu Ranch there is a private road from its eastern end to its western end; that is the road that the court and jury traveled over last week. That present private road extends in a number of places through the cultivated bean land. This past year we have put

1699 the roadway north of the cultivated areas in some sections and have cleared the brush for putting the other portion of the road above the cultivated areas, with the idea of getting the roads outside of the cultivated areas. The proposed road travels through more of the bean land than the present road. I don't know the distance. I know it goes down through the bean fields at places where our roads at the present
1700 time do not go, but just how much I couldn't say without measuring up. The present road from Latigo to Solstice leaves the coast and does not go as near the coast as does the private road, and crosses over a saddle and goes up amongst the hills; at a point directly opposite the hills, the land through which the present road goes is steep, precipitous sides of a rocky bluff most of the way. Then after you pass that rocky bluff, you wind up that S grade that perhaps
1701 you remember, up to the top of the mesa land, which is some distance west of Latigo Canyon. The mesa land at the point which I just gave in my description is now under cultivation. The proposed road about opposite that point, that is, between the point and the northern boundary of the road, goes through property that is not cultivated. The proposed right of way passes through more cultivated land than is saved by the stretches of the proposed right of way that leave the present cultivated land or leave the

1702 present roadway and to the mountain district I can not tell the amount of cultivated land that is taken up by the proposed road in excess, if any, of the cultivated land which is taken up by the present traveled road. I would say, approximately, two or three times as much. I made some suggestion that the proposed road in certain places could be moved further to the north to avoid traversing cultivated land. The effect the making of such
1703 changes would have on the grade of the road would be, I think, that in some places it would lower the grade, and I think in some places it might raise it a little bit. A point I think it could be put in on the location where I pointed out at a saving over the proposed road is particularly on the westerly end, I think, by crossing the canyon higher up there would be shorter bridges. There would be a little more cutting
1704 and filling. I do not know offhand the cost of cutting and filling as compared with the cost of bridge construction. I think the moving of the road further up those canyons would not materially result in increased maintenance cost, due to the danger of flood waters washing out the road. The biggest washes would be at the mouths of the canyons.

Q. Have you made any study of those subjects? A. I have seen the results of many of them on the Malibu Ranch and between there

1705 and Santa Monica and have studied them somewhat on account of the fact that I have had to do with the repairing of them. They could put the road further up the hill and maintain practically the same grade and have less cost of maintenance as to some of them. I don't know offhand what changes I have said might be necessary to this $25,000 pipe line. It would have to be studied out. I don't know. I do know some changes would be necessary. I don't
1706 know to what extent. I don't know what the cost would be. The road in the vicinity or through Zuma Canyon passes over a ten-inch water pipe line. I don't know whether the detail of the county's construction calls for moving that pipe or not. I don't know whether it would be necessary to move it or not. I have told you that at one point the road crossed a spur track, or railway. I refer to the Hueneme
1707 and Port Los Angeles railway. Construction of that was started in 1907; 15 miles were completed in the next three years, so that the road has been completed as a road for 15 miles since 1910. A number of passenger trains have run over it each day. It is a question of holding the franchise. More than one train ran over the road daily for a considerable length of time, up to when we had some very heavy washouts there, two or three years ago. Up to two or three years ago passenger trains ran over the

1708 road, at times from one end of the line to the other; at other times over different stretches in between. There were stations along the line, one particular one on Zuma mesa. I think at that time the terminus was west of Nicolas or west of Lechusa. The other end was at Carbon canyon. The passengers of the railroad got to Carbon canyon by permissive use of the road through Malibu canyon. That is the first can-
1709 yon west of Las Flores. Coal Canyon it is on the map. Our passengers had to travel over a portion of the Ringe property to get on to the railroad. The motive power was gasoline. These passengers went to various points along the line. That still left them on the Rindge Ranch. That is all the further that the railroad went. I do not know what happened to them after they got off the train onto the soil of the Rindge Ranch. I think the date that the
1710 last passenger train went over the railroad was some time in 1914.

Q. Was that a regular passenger traffic maintained for the general public? A. All that the public demanded.

Q. How many trains a day did they run over that road, or do they run any? A. Sometimes one, sometimes more. I rather think that one went about every day; there might have been some skips that I don't recall. We never ran any regular steam engines over that road.

1711 They ran freight trains. They got the freight from the Malibu Ranch, and the tenants of the Malibu Ranch. That was not purely a private matter between the Rindge people and those that lived on the ranch in getting freight for the ranch. The nature of that freight traffic was for the public that requested it.

Q. The public could not get to the road without the permission of the Rindge Company, could they? A. There were a number of peo-
1712 ple that were on the ranch.

Q. Answer the question. A. Yes, sir.

Q. How could they get there without permission? A. They had permission.

Q. Unless they had it they could not ship their goods on the road? A. Not on that portion that had been completed at that time. There was no time when the general public, either traveled as passengers or shipped their freight
1713 over that road, or any portion of it, without going onto the private property of Mrs. Rindge and the Rindge Company, or with the permission of Mrs. Rindge or the Rindge Company.

Q. Then, so that we will understand you, there never was a time when the general public could either travel as passengers or ship their freight over this railroad line without going onto the private property of the Rindge Company or the Rindges, and without the permission of the Rindge Company? A. Well, I

1714 don't know. I think they could have traversed the property of the railroad company without the permission of the Rindge Co. The railroad property is not on the ranch property. The railroad company property does not commence at Carbon Canyon. It goes to the eastern boundary of the Malibu Ranch. The railroad itself, though, the tracks and roadbed, started at Carbon canyon; so the public would have had to find the location of the right of way and travel
1715 on the right of way to get there themselves, or to get their goods to the train. There was a road laid right near that right of way. It was on it. They could have traveled over that road to the railroad without going on the private property of the Rindges. It is a fact that they could not have traveled on the right of way way of the railroad. There were points that passengers on that road could have shipped their goods
1716 to or traveled to after they once got on to the railroad at Coal Canyon, other than the property of the Rindge Company or Mrs. Rindge. A number of points along the line people have been given permission to traverse the ranch. They have shipped at those points and taken goods where they wanted to. They could not have taken themselves off that train or goods off that train without permission of the Rindge Co., if they left the right of way of the railroad company. The general public, an ordinary citi-

1717 zen who wanted to ride on that train, and didn't have the permission of the Rindge Company, would walk or drive up to Coal Canyon on the right of way of the railroad. He would take his train there and when he got to any point where he wanted to get off he could not legally step foot on the property without the permission of the Rindge Company.

Tuesday, October 12, 1918.

1718 10 o'clock A. M.

F. B. SCOTTON

resumed the stand for further

Cross-Examination

By Mr. Burnell:

Q. I understand that there are two railroad companies in connection with this case, the Hueneme & Port Los Angeles Railroad and the Hueneme, Port Los Angeles and Southern.

1719 Which of the companies was it that built the road we were talking about yesterday?

Mr. Anderson: Objected to as immaterial and not cross-examination.

The Court: Objection overuled.

(Exception No. 10.)

A. The Hueneme, Malibu & Port Los Angeles.

(Continuing.) That is the older of the two. The motive power to move the cars was applied by a gasoline engine, constructed upon a car and

had wheels under it, and enough power was developed to haul materials of a total weight of five or ten tons at a time. That was not a gasoline engine taken from an automobile—although I think we did have one engine equipped with a strong, powerful gasoline automobile engine, and another one with an upright engine. We had several. It is absolutely not a fact that whatever vehicles were drawn along the tracks of that railroad were drawn by horses and mules; at times they were; sometimes were used gasoline power and sometimes horse and mule power. That applied to almost all of the period of time. We did not use the horses and mules for motive power more frequently than the gasoline engine. We used the gasoline more frequently. We actually operated trains on that road from the time it was constructed until about 1914. I don't remember the exact month, but we had some heavy rains; it may have been in the early part of 1914, at the time of the heavy rains in January and February. Since that time there have not been any trains run over that road entirely; over portions of it; over the eastern portion of it; not very far; I guess from the warehouse westerly, perhaps one or two miles. I don't remember what motive power was used, either gasoline, horses or mules. There may have been passenger trains over the road at that time; I do not know. I had not

1723 been visiting the ranch very frequently at that time. Trains were not operated over this road from the eastern end very long, I think, because we had other washouts soon afterwards, perhaps a few weeks. At the present time there are portions of the roadbed and tracks of this railroad actually covered by soil and sand, and there are also other portions where trestles are broken down, and also other portions where the ties are
1724 entirely gone and the rails without any ties or support hanging across gullies and ditches; we had some very bad washouts. I think there are not other portions of the road where the rails are spiked on to the ties by one spike for each tie. I know that is not true of all the road. I gave you yesterday distances from various points, for instance, from the Yerba Buena settlement to Heneme and to Oxnard, and told you the distance from Heneme to Yerba Buena
1725 was 14 miles. That is measured in an air line. A road from Yerba Buena settlement to Hueneme would not deviate very far from an air line, directly. (Witness draws on map, Exhibit 6.) That line just drawn from the center of the Yerba Buena district to Hueneme indicates the air line distance about 14 miles. The red dotted line starting from about the center of the Yerba Buena settlement and joining with the line around about the word "Guadalasca," and then continuing on to Hueneme in an air line,

1726 indicates a route that is not much longer than an air line. I think the mountainous country ends at a point above the letter "L" in "Guadalasca." About here is where it ends. (Indicating on map.) It is comparatively open country. The air line would be mountainous in any direction. From the point where my road passes under the letter "G" in "Guadalasca" to the eastern terminus of that road at Yerba Buena
1727 settlement, the air line distance would be about 6½ miles. I never saw a road passing through mountainous or hilly country that ran absolutely straight for a distance of six miles, and I have seen many roads in flat country that are not straight. My distances to Oxnard were also air line; Santa Paula 18 miles was air line; all of the distances were air line distances. I don't mean to tell you that the distance from Yerba Buena settlement to Heneme, Oxnard or Santa
1728 Paula by road would be the distances I have indicated; it would be more. Any road in any mountain would be longer than the air line distance. That applies to all of those distances; to the store at Mathieson ranch and the other distances which I have given.

Q. If you were laying out a road from Yerba Buena to Santa Monica, part of it would pass over the Rindge Ranch and a considerable part of it through the Pacific Ocean?

1729 Mr. Anderson: We object to that on the ground that he never claimed that he was laying out a road. He was simply giving the air line distances between the points, and has pointed out that necessarily a road would be longer.

The Court: Objection overruled.

(Exception No. 11.)

A. No, sir.

Q. (By Mr. Burnell): Your line just drawn on the board from Yerba Buena to Santa Mon-
1730 ica does not indicate your idea of how a road should be laid out between those two points then? A. I was asked the air line distances between various points.

Q. Answer the question yes or no; it does or it does not. A. And I have drawn a line to indicate the air line distance.

Q. Now, will you answer the question? (Question read.) A. No, sir.

1731 Commencing with the eastern end of the proposed road at Las Flores Canyon, at the present time there is a bridge at the entrance to the Rindge property at Las Flores Canyon, and a gate across that bridge. The proposed right of way from that bridge to Coal Canyon does not run through sandy soil all the way to Coal Canyon. I would call it a loam and on the southern portion of the right of way a loamy sand. It is not just the same kind of sand as on the beach. The right of way of this railroad runs right

1732 through a rocky hill or promontory on the east side of Coal Canyon. The right of way of the railroad company, referring to the railroad which I told you about this morning, comes down to Coal Canyon as it runs east. There is a rocky promontory coming down from Coal Canyon towards the beach; the right of way passes through that rocky promontory. There has been no construction through that promon-
1733 tory. I would like to complete or make more correct my last answer. You asked whether or not the right of way went through that promontory; it includes the entire promontory from the mean high tide line back to the north line of the right of way, the width of the right of way and the open country to the south. The continuation of that portion of the right of way in which the tracks have been laid, runs through the promontory. It is not true that between Coal Can-
1734 yon and Malibu Canyon the right of way of the proposed road runs through sandy soil, the same sand you find on the beach. It runs through loamy, sandy soil, the kind of soil that is there at that particular point on the Malibu Ranch. Part of it is soil that is suitable for cultivation, in my opinion, and part not. In wet weather, none of the land that the road runs through between Coal and Malibu Canyon is boggy land. It does not run across the bed of the Malibu Creek, not between Coal and Malibu Canyon.

1735 Between Coal Canyon and Malibu Canyon there is a wharf, going out into the ocean. Just east of the wharf or warehouse the right of way goes through certain improvements, spur tracks and tracks of the railroad to the warehouse, the tracks on which this passenger, freight and all necessary traffic passes. I have not studied the right of way quite close enough to know whether it takes part of the warehouse or not. From
1736 Winter Canyon west the road winds around the base of the hills for a distance of about a third of a mile—a third to a half mile. If the actual distance on the county map shows 1,000 to 1,200 feet that would cover. A third of a mile would be about 2600 feet, then it begins climbing across the mesa. The land over which it climbs up to this mesa is rough pasture land, sloped from the mesa land down to the beach. I think it is not steep hillside. It is hillside, but it is not
1737 cliff, or bluff. It isn't a fact that after it gets to the mesa on the east side of Marie Canyon, that it runs for about a couple of thousand feet over a very badly washed stony pasture land covered with rocks and stones. I think it does not go over that kind of land. It traverses the east side of Marie Canyon, which would be a steep slope of the canyon. The character of the soil there is like almost all the steep canyons here, rocky and small rocks and soil and brush. It has never been cultivated, not on those steep

1738 sides. Leaving Marie Canyon, we have gone over this hillside and then we come to a rolling mesa. Then we go into a bean patch, the one just west of Marie Canyon, and runs from Marie to Puerco. I think it is about 20 acres. It is wider from the ocean back than it is from east to west. Straight from east to west it is about seven or eight hundred feet. I think that it is more than three or four hundred feet wide. I never meas-
1739 ured it, but I have walked across it, and my memory of it is it is more than three or four hundred feet. There was a fence around that bean patch that we have been talking about, and I believe there is now, to keep the stock out. I don't know whether that is an iron fence with iron posts with five barbed wires, or whether it is a four by five, seven foot redwood posts, with five wires. I am quite sure, though, it is not a woven wire fence. It isn't a four wire fence,
1740 four strands of barbed wire on iron or steel posts. I heard Mr. Otis' testimony. I think I know the kind of fence he described. At the eastern end of the ranch we have, I think, 52 in., close mesh woven wire, with several barbed wires above the woven wire, and it runs from the southeastern corner of the ranch in a northerly direction, I don't know just how far, but I do know we bought about a mile of wire to start our line fencing with that class of fencing; and then in the Malibu canyon, and I think in

1741 Zuma canyon, we have quite a little woven wire fence, some that is about 26 or 32 inches high, and other woven wire fence that is around about 48 by 52 inches high; and if they enclose horse pastures, or along where the horses are, some of them have the common wire, that is, without barbs, and others have barbed wire both under the woven wire and above it. There are various kinds and types of fences which we have found suitable for various parts of the
1742 ranch; this fence on the eastern end of the ranch, that is, the line fence of the Malibu Ranch property—that fence extends from the Pacific Ocean at mean high tide, along the eastern boundary of the ranch, up Las Flores Canyon, and I think it goes farther than 200 feet, but I don't know how far. Whether it goes as much as half a mile I couldn't state positively, but it goes up at Las Flores canyon. That fence
1743 does not run to below the level of mean high tide.

Q. Then is the beach at low tide uncovered so that you can walk along the beach from east of the Rindge line to west of the Rindge line? A. At mean high tide it happens to be on the southerly side of the fence.

Q. It would have to be a pretty low tide? A. I think all mean high tides would have to be low to have one traverse the beach below mean high tide line.

1744 Going up Las Flores Canyon the fence ceases at some points. I think the Rindge property is fenced on the eastern boundary line and also on the northern. I know that we have always had a line fence in that neighborhood excepting when they have been burned out and I also know that not long ago we only discontinued the work of repair and reconstructing of the line fence in that particular part of the country on account of
1745 our surveyors being shot at. I did not see any of them being shot at; all I know is what somebody told me. Along the eastern or northeastern boundary in Las Flores Canyon, I know there is a fence there for some hundred feet or two; beyond that I am not now conversant. I don't know beyond that 200 feet at the present time. After you have passed the mouth of Marie Canyon, you come to a bean patch, west of Marie. That bean patch is fenced; I think it
1746 is a three or four wire fence of barbed wire on wooden posts.

Redirect-Examination

By Mr. Anderson:

Q. Coming back to the question of this railway, do you know how much money has been expended by that railway in connection with its business since it was organized?

Mr. Burnell: Objected to as incompetent, irrelevant and immaterial.

1747 The Court: I don't see the materiality of that.

Mr. Anderson: They are undertaking to show that it is not a railroad and we expect to show that the company has actively been engaged, and has expended large sums of money in its construction and maintenance. I think that the question of the kind of gas engines used, if that was material, this would be.

1748 Mr. Burnell: I want to be perfectly frank with Your Honor. One of the purposes of that examination was to show just what this railroad company had done in the way of operation. Under section 468 of the Civil Code they may have spent a million dollars, but if they ceased to keep it in operation for six months, they lost their franchise and automatically forfeited the right of way.

The Court: In view of the inspection made
1749 by the jury and the court, of this right of way, I think that all of these questions are material —of course, if you want to make the record you may do so, but the inspection, for the purposes of observation, throws considerably more light on the matter than the record does.

Mr. Anderson: I wish to make the record to some extent.

The Court: All right. Objection overruled.

A. Yes, sir.

Q. By Mr. Anderson: How much? A. I

know of assessments in excess of $285,000 having being levied, and paid into the company by the stockholders and all of that was used in the construction of that railroad. I am secretary of the railroad company and thoroughly familiar with all of the operations and expenditures. I am secretary of this Heneme, Malibu & Port Los Angeles Railroad. Those repairs of washouts have not been made because we have had difficulty in financing them.

Here the articles of incorporation of the Hueneme, Port Los Angeles & Southern Railway were put in evidence, and were in words and figures as follows:

"ARTICLES OF INCORPORATION
of the
HUENEME, MALIBU & PORT LOS ANGELES
RAILWAY:

Know all men by these presents: That we, the undersigned, a majority of whom are citizens and residents of the state of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the state of California.

And we hereby certify:

I.

That the name of said corporation shall be the Hueneme, Malibu & Port Los Angeles Railway.

II.

That the purposes for which said corporation is formed are as follows, namely:

To build, construct, buy, lease, sell, operate, hold and have, an electric railroad with necessary turn-outs, side tracks and switches to run from Port Los Angeles, in the county of Los Angeles, state of California, along the shore of the Pacific ocean northerly to Hueneme in the county of Ventura, in said state of California.

The said railway to run from the exterior limits of the said Port Los Angeles, in said county of Los Angeles, along the shore of the Pacific Ocean and along or on the exterior boundary of the said Malibu ranch and other property to Hueneme in said county of Ventura.

The kind of railway to be operated, is one operated by electricity, steam or horses or mules, or by any other motive power that may hereafter be deemed advisable. The estimated length of the said road is fifty-five (55) miles.

III.

That the place where the principal business of said corporation is to be transacted is in the city of Los Angeles, county of Los Angeles, state of California.

IV.

That the term for which said corporation is to exist is fifty (50) years from and after the date of its incorporation.

1756

V.

That the number of directors or trustees of said corporation shall be five (5), and that the names and residences of the directors or trustees who are appointed for the first year and to serve until the election and qualification of such officers are as follows:

Names.	Whose residence is at:
M. H. Sherman,	Los Angeles, California.
1757 Frederick H. Rindge,	" " "
W. J. Williams,	Pasadena, California.
May K. Rindge,	Los Angeles, California.
George I. Cochran,	" " "

VI.

That the amount of the capital stock of said corporation is seven hundred and fifty thousand dollars ($750,000.00), and the number of shares into which it is divided is seventy-five hundred (7,500), shares of the par value of one hundred
1758 dollars ($100) each.

VII.

That the amount of said capital stock which has been actually subscribed is seven hundred and fifty (750) shares and the following are the names of the persons by whom the same has been subscribed, to-wit:

Names of subscribers.	Nos. of shares.	Amount.
Frederick H. Rindge,	596	$59,600
George I. Cochran,	10	$ 1,000
W. J. Williams,	10	$ 1,000

1759 M. H. Sherman,	10	$ 1,000
May K. Rindge,	124	$12,400
Total No. of shares,	750	Total $75,000

That the subscribers hereto do hereby elect George I. Cochran the treasurer of said intended corporation.

That at least 10 per cent of the capital stock of said corporation has been paid to said George I. Cochran, treasurer of the said intended cor-
1760 poration for the benefit of the said corporation, namely, the sum of seventy-five hundred dollars ($7,500.00).

In Witness Whereof, we have hereunto set our hands and seals this 24th day of September, A. D. 1903.

M. H. SHERMAN, (Seal)
FREDERICK H. RINDGE, (Seal)
MAY K. RINDGE, (Seal)
1761 W. J. WILLIAMS, (Seal)
GEORGE I. COCHRAN, (Seal)

(Duly verified and acknowledged.)

Mr. Anderson: There is attached to that a certified copy of the articles of incorporation, certified to be a copy filed with C. F. Curry, secretary of state, which certification is dated the 13th day of October, 1903, and the endorsement shown, that it was filed in the office of the secretary of state on the 13th day of October, 1903. I think that is sufficient. The file number is

4992. Now, I wish to offer a deed which bears the recording stamp of the county recorder of Los Angeles county.

Mr. Burnell: We have examined that.

Mr. Anderson: I wish to introduce it with the same understanding as the other, to be copied into the record.

Mr. Burnell: Yes.

Whereupon the document referred to was admitted in evidence, and was and is in words and figures as follows, to-wit:

This Indenture, made this 6th day of October, in the year of our Lord one thousand nine hundred and three between Frederick H. Rindge and May K. Rindge, husband and wife, both of the city of Los Angeles, in the county of Los Angeles, state of California, parties of the first part hereto, and the Huneme, Malibu & Port Los Angeles Railway, a corporation organized and existing under the laws of the state of California, and having its principal place of business in the said city of Los Angeles, the party of the second part hereto;

Witnesseth: That the said parties of the first part for and in consideration of the sum of Ten Dollars ($10.00) (and other good considerations) gold coin of the United States to them in hand paid, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey to the said party of the second

part, its successors and assigns forever, the perpetual right of way for the construction and maintenance of a railway over and along the following described property, situated partly in the county of Los Angeles, state of California, and partly in the county of Ventura, state of California, and particularly described as follows, to-wit:

A strip of land two hundred feet wide along the westerly side of the Malibu Ranch immediately adjoining the mean high tide line of the Pacific Ocean; said strip of land being the most westerly 200 feet of said Malibu Ranch as per patent of said rancho recorded in the office of the county recorder of said county of Los Angeles in book 1 of patents, page 414, et seq.

Also a strip of land two hundred feet in width along the westerly side of all the property of said F. H. Rindge lying north of said Malibu Ranch adjoining the mean high tide line of said Pacific Ocean.

The said right of way is granted for the purpose only of constructing, operating and maintaining a railway to be operated by electricity, steam or horses or mules, or by any other motive power which the said grantee may deem advisable.

To have and to hold the same to the said party of the second part or its successors and assigns forever for the purposes aforesaid.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

FREDERICK H. RINDGE, (Seal).

MAY K. RINDGE, (Seal).

(Duly acknowledged.)

The document bears the following endorsements):

Recorded at the request of grantee October 8th at 5 p. m. in book 1898, page 146 of deeds, Los Angeles county records. Calvin Hartwell, county recorder, by R. L. Hazen, deputy. Fees $1.20.

Dated 6th October, 1903. Frederick H. Rindge and May K. Rindge to Heuneme, Malibu & Port Los Angeles Railway. Deed of right of way.

Mr. Anderson: Now, if Your Honor please, I desire to offer in evidence another document under the same stipulation to be copied into the record.

Whereupon the document referred to was admitted in evidence and was and is in words and figures as follows, to-wit:

This indenture, made the 16th day of March, in the year of our Lord one thousand nine hundred and six (1906) between Robert F. Jones, of the city of Santa Monica, in the county of Los Angeles, state of California, party of the

1771 first part, and the Hueneme, Malibu & Port Los Angeles Railway, a corporation, duly organized under the laws of the state of California with its principal place of business in the city of Los Angeles, county of Los Angeles and state aforesaid, the party of the second part witnesseth.

That the said party of the first part for and in consideration of the sum of ten dollars, lawful money of the United States of America, to him
1772 in hand paid by said party of the second part. receipt whereof is hereby acknowledged, does by these presents, grant, bargain and sell, convey and confirm, unto the said party of the second part and to its successors and assigns forever, a right of way for railroad purposes on, under, above and over that portion of the rancho Boca de Santa Monica, in the county of Los Angeles aforesaid and being a part of allotment No. 2, which was allotted to Manuel Mar-
1773 quez in and by the final judgment and decree of partition by the District Court of the 17th judicial district of the state of California in that certain action numbered 2405 on the files of said court wherein Ramona M. De Baker et al were plaintiffs and Manuel Marquez et al were defendants, which is more particularly described as all that part or portion of said allotment number 2 which lies between the line of ordinary high tide of the Pacific ocean and the line parallel to and two hundred (200) feet distant north-

erly from said line of ordinary high tide. Together with the right, liberty and privilege of constructing, erecting and maintaining on, under, above and over the above described strip of land the railroad of the party of the second part together with its roadbed and buildings, rails, poles and wires, and all sundry other such equipment, electrical or otherwise as may now, or hereafter be or become necessary, convenient or useful in and about the construction, improvement, maintenance, operation, repair, addition to and extension of said railroad, its incidents and appurtenances.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written. Signed, sealed and delivered in the presence of Wm. J. Hunsacker.

ROBERT F. JONES (Seal).

(Duly acknowledged.)

(The document above referred to bears the following endorsement):

Deed for right of way. Robert F. Jones to Hueneme, Malibu and Port Los Angeles Railway. Recorded at request of grantee April 7, 1906, at 29 minutes past 11 A. M. in book 2637, page 170 of deeds, Los Angeles county records. Calvin Hartwell, county recorder, by S. D. Weil, deputy. Fees, $1.30.

1777 (Witness, continuing): I was asked about a boggy condition at the point where the proposed right of way crosses the Malibu creek. I am familiar with the conditions there in the winter time, during the stormy season. That road at that point is not passable by automobiles during the storm season. According to my best recollection and my observation, it is impassable from storms and the boggy condition throughout the entire rainy season and away into spring.

1778 *Recross-Examination*

By Mr. Burnell:

Q. Mr. Scotton, calling your attention to this deed last introduced in evidence, I will ask you if the company has any deeds or other conveyances conveying to it any rights of way in between the termination of the right of way granted by the Rindges, as set forth in the first deed you have introduced and the right of way

1779 described in the deeds that were just introduced?

A. Yes sir. Deeds for right of way over the Joe Call property.

Q. Now, will you point out on the map (Exhibit 6) so we will know where these rights of way are, Mr. Scotton, the right of way granted by the deed from Jones.

The Court: Delineate it in colored pencil.

Mr. Burnell: Yes, make it blue, if you will.

(Witness marks on map.)

1780 A. This would be approximate. I can put it in the neighborhood of the place. I will mark that number 1. (Witness marks on map.) I think Mr. Call is in here (indicating on map.)

Q. Mark where it is according to your best information. (Witness marks on map.) That is the Call property. That is not the little house to your left as you go from the Rindge property towards Santa Monica, up on the bluff. The
1781 first one as you go past is Jack Henry, and then about a mile east there, Joe Call has a place. Jack Henry has a good house on the left just as you come out of the Malibu Ranch on the east side of Las Flores. There are no other rights of way of the railroad company besides those I have described and introduced in evidence, at the present time. It is true that there is a break or hiatus between the right of way granted by Mr. Jones and the right of way
1782 granted by Mr. Call, and the same applies between the right of way granted by Mr. Call and the right of way granted by Frederick Rindge. Traveling along this railroad up to its westerly terminus, the termination of the road is about a mile and a half west of the Ventura county line. The company has no rights of way at the present time extending farther west or in any other direction beyond the property belonging to Mrs. Rindge and the Rindge interests, indicated as just below Yerba Buena canyon and

1783 west of the Ventura county line. (On Exhibit 6). The only continuous right of way that the company has, or ever has had, is entirely situated within the boundaries of the Malibu Ranch and of the property in Ventura county owned by the Rindges; the description in the deed of the right of way from the original grantor, Mr. Frederick Rindge, was for a two hundred foot strip immediately adjoining the Pacific ocean at
1784 mean high tide. The tracks of the railroad that were actually laid on the ground, the tracks and rails, do not at all points lie within the two hundred foot right of way.

Q. For instance, if we take Point Dume, as shown on the map, Defendant's Exhibit 6, how far from the ocean side or southerly extremity of Point Dume are the tracks of the present railroad on the ground? A. My memory is that the practical location, as worked out at that
1785 point, was about a thousand feet back from the point itself.

Q. Now, I call your attention to the point as shown on the map as lying east from Point Dume. It is really the second point lying east of Point Dume and is just to the west, according to the map, from the line that runs up and down from the north and south and passes the "O" in the word "Santa Monica" and is a little bit below and to the west of the letter "D" in "Dry Canyon." Whereabouts is the railroad

1786 that was put upon the ground in relation to this point? A. I think it is within the 200 foot right of way at that point. I think there are other points along the line of the road that is built upon the ground where it departs from the right of way described in the deed from Mr. Rindge, that is, the 200 foot right of way; I think, at the mouth of Malibu Canyon. It is a fact, I think, that at some places the road that has actually been built lies outside of and not
1787 within the right of way granted to the Huneme, Malibu & Port Los Angeles Railroad Company by Frederick Rindge.

These assessments were levied in 1907, I think, 1908 and 1909, and I think that some after 1909. The heavy ones were levied in 1907, 1908 and 1909, and there were lighter ones levied after that, and also advances made after that time. I think that assessments were
1788 levied after 1909. These advances were made by the Rindge Company and May K. Rindge. I know the reason for the Rindge Company and May K. Rindge making advances to this separate entity, the railroad corporation.

Q. What was the reason?

Mr. Anderson: We object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

(Exception No. 11.)

1789 A. The railroad company had difficulty in financing its business, and these advances were made by the Rindge Company and May K. Rindge. The Rindge Company lent or advanced money to the railroad, because the right of way of the railroad was through a portion of their property, and they were more or less interested in its welfare.

Mr. Burnell: We want to offer, if the court please, the articles of incorporation of the Hueneme, Malibu & Southern Railway, on file in the office of the county clerk. We will submit the document to Your Honor so you may see it.

1790

The articles of incorporation of the Hueneme, Malibu & Southern Railway were then admitted, and are as follows:

"ARTICLES OF INCORPORATION

of

HUENEME, MALIBU AND SOUTHERN RAILWAY.

1791

Know all men by these presents: That we, the undersigned, a majority of whom are citizens and residents of the state of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the state of California.

And we hereby certify:

I.

That the name of said corporation shall be Hueneme, Malibu and Southern Railway.

1792 II.

That the purposes for which said corporation is formed are as follows, namely:

To build, construct, buy, acquire, lease, sell, operate, hold and have a railroad with necessary turnouts, sidetracks and switches to run from Port Los Angeles, in the county of Los Angeles, state of California, along the shore of the Pacific ocean northerly to Hueneme in the
1793 county of Ventura, in said state of California.

The said railroad to run from the exterior limits of the said Port Los Angeles, in said county of Los Angeles, along the shore of the Pacific ocean and along or on the exterior boundary of said Malibu Ranch and other property to Hueneme in said county of Ventura.

The kind of railroad to be operated is one operated by electricity, steam, or horses or mules, or by any other motive power that may
1794 hereafter be deemed advisable. The estimated length of the said road is fifty-five (55) miles.

III.

That the place where the principal business of said corporation is to be transacted is in the city of Los Angeles, county of Los Angeles, state of California.

IV.

That the term for which said corporation is to exist is fifty (50) years from and after the date of its incorporation.

1795 V.

That the number of directors or trustees of said corporation shall be four (4), and that the names and residences of the directors or trustees, who are appointed for the first year and to serve until the election and qualification of such officers are as follows:

Names. Whose residence is at:

M. K. Rindge, Los Angeles, California.

1796 R. R. Adamson, Los Angeles, California.

Frederick H. Rindge, Los Angeles, California.

F. B. Scotton, Los Angeles, California.

VI.

That the amount of the capital stock of said corporation is seven hundred and fifty thousand ($740,000.00), and the number of shares, into which it is divided is seventy-five hundred (7,500) shares of the par value of one hundred dollars ($100.00) each.

1797 VII.

That the amount of said capital stock which has been actually subscribed is five hundred and sixty (560) shares and the following are the names of the persons by whom the same has been subscribed, to-wit:

Names of subscribers.	No. of shares.	Amount
M. K. Rindge	186	$18,600.00
R. R. Adamson,	186	18,600.00

1798	Frederick H. Rindge,	186	18,600.00
	F. B. Scotton,	2	200.00
		560	$56,000.00

That the subscribers hereto do hereby elect M. K. Rindge the treasurer of said intended corporation.

That at least ten per cent (10%) of the subscribed capital stock of said corporation has been paid to said M. K. Rindge, treasurer of
1799 the said intended corporation, for the benefit of said corporation, namely, the sum of fifty-six hundred dollars ($5,600.00).

In Witness Whereof, we have hereunto set our hands and seals this 25th day of January, A. D. 1916.

M. K. RINDGE,
R. R. ADAMSON,
FREDERICK H. RINDGE,
F. B. SCOTTON.

1800 (Duly acknowledged.).

That was filed January 26th, 1916, H. J. Lelande, clerk, by C. C. Crippen, deputy. The number of the articles of incorporation is 18,-923.

Mr. Burnell: Now, if the court please, in that connection we desire to offer a deed from May K. Rindge and the Rindge Company, a corporation, to Hueneme, Malibu & Southern Railway Corporation.

1801 The document last offered as received in evidence was as follows:

"U. S. I. R. stamp $100.00. Cancelled.

"This indenture, made this second day of February, in the year of our Lord one thousand nine hundred and sixteen, between May K. Rindge, and Rindge Company, a corporation, first parties, hereto, and Hueneme, Malibu and Southern Railway, a corporation, second party hereto:

1802 Witnesseth: That the first parties hereto for and in consideration of the sum of ten dollars (and other good and valuable considerations) to them in hand paid, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the second party, its successors and assigns forever, a right of way for railroad purposes only through, over, along, upon and covering that certain strip or parcel of land situate partly in the county of Los

1803 Angeles and partly in the county of Ventura, state of California, being a portion of the Malibu Ranch and certain neighboring tracts, and described as follows, to-wit:

A strip of land sixty (60) feet in width extending from the eastern boundary of said Malibu Rancho at or near Las Flores Canyon westerly to Yerba Buena Çanyon in said Ventura county, and located equally on either side of center line hereinafter particularly described, ex-

1804 cepting that over and along all distances or spaces where said center line is located within thirty-five (35) feet of the line of mean high tide of the Pacific ocean, the southerly boundary of said right of way shall be a line following the meanderings of said mean high tide along and through each such space and located five (5) feet above or landward from said line of mean high tide.

1805 The center line above mentioned is particularly described as follows:"

Mr. Burnell: Then, if Your Honor please, comes several pages of a long surveyor's description by course and angles and monuments which I take it would be utterly useless to read into the record, because it would take a surveyor to interpret it.

Mr. Anderson: As a matter of fact, you and Mr. Vallee are thoroughly familiar with the various papers and documents in this case. Isn't it 1806 that right of way as described in that deed actually delineated, to the best of your information, on the map Exhibit "A" annexed to the complaint?

Mr. Burnell: I think so, but I am not positive. Mr. Comly can tell when he comes on the stand.

Mr. Anderson: We waive the reading of the description. I think it would be unintelligible to any of us, but my impression is that in large

part at least, at least in so far as pertinent to anything in this case, that description has been impressed upon that map by the surveyor.

Mr. Burnell: That is my impression. I don't want to stipulate to it until I know, but it is my impression, and I think we will find that it is correct. After the description, the deed proceeds as follows:

"Subject to all rights and interest of the Hueneme, Malibu & Port Los Angeles Railway, a corporation, in or to the right of way hereinbefore described, or any part thereof, or any improvements constructed or located thereon.

Together with the right to extend the slopes or cuttings or embankments as far as necessary, but not to provide for or accommodate slopes flatter than at a grade of one and one-half (1½) to one (1) and to build and maintain within said right of way and beyond the limits thereof all necessary culverts and other work for the control and disposal of storm water and natural streams of water flowing in and upon or across said strip of land; also the right to use the material taken from said right of way for the construction and maintenance of said railway; provided, however, that said right of way shall forever be deemed or treated as extending for any purpose or to any extent within five (5) feet of any part of said line of mean high tide. The first parties hereby reserve the right to crossings over

the right of way hereby granted, all of which shall be constructed and maintained by the second party. Said crossings shall not be less than ten (10) feet nor more than one hundred (100) feet in width and shall be located at such points along said right of way as shall be selected by the first parties and they shall be entitled to such number thereof as shall be reasonably warranted by the business and operations carried on by them on the neighboring lands, and said crossings shall be of such type grade, under grade or over grade as the first parties may elect; first parties also reserve the right to construct and maintain pipes, ditches, flumes, etc., for the conveying of water, oil, gas or other like substances under, over, across or along said rights of way, or any part thereof; first parties also reserve the right to have flag stations established and maintained when the railroad of the second party or its assigns, shall be constructed and operated upon said land; said flag stations to be located at important points along said right of way, and at each of said stations all local and accommodation trains and local freight trains shall stop on signal; the location of said flag stations to be designated hereafter by first parties hereto.

All other trains to stop at not less than three stations located along said right of way; said

stations to be designated at any time in the future by the parties of the first part.

To have and to hold the same to the second party, its successors and assigns, forever, for the purposes aforesaid and subject to the reservations above provided.

In Witness Whereof, said May K. Rindge has hereunto set her hand and said Rindge Company has caused this instrument to be executed in its name and under its seal by its proper officers thereunto duly authorized this 2nd day of February, 1916.

MAY K. RINDGE,
RINDGE COMPANY.
(Seal). By May K. Rindge, *President.*
R. R. Adamson, *Secretary.*

(Duly acknowledged.)

A full, true and correct copy of original, recorded at the request of F. B. Scotten, February 2, 1916, at 45 min. past 4 p. m.

That is recorded in book 6216 of deeds, commencing with page 92, and ending on page 98.

Mr. Anderson: We will stipulate that R. R. Adamson is Mrs. Adamson, the daughter of Mrs. Rindge, and the Frederick H. Rindge named is the son and May K. Rindge is Mrs. Rindge the defendant.

(Witness, continuing): The company known as the Hueneme, Malibu & Southern never ac-

1816 tually constructed any railroad or improvements over the right of way described in the deed just offered in evidence. I am familiar with the right of way just described, and the location on the land of the right of way described in the deed to this second railroad company. I think the location described in the deed just read coincides with the line of railroad tracks which are actually on the ground which were built by
1817 the Hueneme, Malibu & Port Los Angeles railway, practically throughout, throughout its entire length.

Redirect Examination

By Mr. Anderson:

The railroad constructed by the Hueneme, Malibu & Port Los Angeles railroad has not been formerly turned over to the other company yet. I think the description just mentioned coincides practically with the center line of the
1818 railroad track as laid at the present time.

P. A. HOWARD,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Anderson:

My name is P. A. Howard. I live in Los Angeles, I have lived in Los Angeles 29 years. My general occupation during that time was contractor; my particular line of contracting is

1819 building of roads. I have built a great many roads. I have, in the course of my business as a road builder, had occasion to figure on the cost of constructing roads. I have familiarized myself with the various items and elements of cost in the construction of such roads. I have recently kept in touch with the matter of the various items of cost in constructing such roads, and am now. I am familiar with the proposed
1820 route of what is called the main road across the Malibu Ranch, have visited it and gone over it. I have inspected it in whole or in part twice, and have given it a careful and thorough inspection. I have familiarized myself sufficiently with it to be able to give an idea of, or estimate the cost of, constructing a road over that route. I made such an estimate; in connection with the making of such an estimate, I examined the files in the county surveyor's office with reference to this
1821 proposed right of way. I examined the estimates there and all the data which they had. At that time I examined the documents which you now show me which are marked defendants' exhibit 5, particularly with reference to the summary on the last page. I went over these thoroughly. I arrived at a conclusion at that time as to whether that summary was a fair, reasonable estimate of what it would cost to do the work outlined in that summary at the time that it was made in the year 1916. I reached such

1822 a conclusion; I considered this a very fair estimate.

Q. I will ask you that as to each of the items contained on the estimate. A. That is how I derived my answer, was by going over each one of them carefully and I considered it a fair estimate in 1916. There have been changes in the matter of the cost of labor and material which would add to the estimate. I have familiarized myself with that. With regard to
1823 labor, I think that today a fair estimate would be 50 per cent advance over the price of labor in 1916. According to the estimate I have made I simply increased the figures of that estimate by 50 per cent. The figures are the figures per cubic yard of excavation and the cost of same, and the headwalls for the proposed road, and for the bridges and for the pipes. Those two items would be affected by that. I estimated
1824 the cost as based on this summary for 1916, which is $73,462.60, to that add 50 per cent, $36,731.24; excavation estimated would be total summary at the present time, $110,193.75. The headwalls of that item is $1571, 50 per cent would make it, $2356.50. They have estimated here, instead of estimating the concrete bridges, which are used generally now for bridge work, at the present time, they have estimated a piling and trestle bridge, on account of its being more economical. The cost of material at this

1825 time, I know to be, the basis of lumber prices to be, $31 a thousand, and the basis in 1916 was $21 per thousand, but that is for lumber only. The freight in 1916, the county had an arrangement with the railroad whereby their freight cost them—it would not be the commercial rate, and if we did work for the county we were allowed a different freight rate than they were allowed if doing it for private purposes. Under
1826 the present arrangement, and present management of the railroads, the county has had to advance its freight rate to the commercial rate and then add to that 50 per cent, which makes it about 60 per cent higher for freight and material, and to the price on the summary I have added 60 per cent. That is my opinion of what is the reasonable advance. Estimated cost of pipe here was on the original $25,364.40, to which I have added 60 per cent, making $40,-
1827 580.04. The cost estimated for bridges was in the original $85,350, to which I have added $51,-210, making $137,560, and the estimated cost of guard rail fence along the road was originally $2,880 and 60 per cent added makes $4,608, or a total of $294,301.29.

Q. Now, Mr. Howard, please explain if you will, what those headwalls are. A. Where a drainage pipe is put in across a road, they usually have wing walls, some call them wing walls, or head walls to catch and divert into the

pipe the flow of water. They are necessary and proper as a part of the construction of the road. The road would not be safely constructed without them. These items under the head of guard fence—that is the white fence that you see along the road, to call the attention of traffic to the fact that it is a dangerous place. I wouldn't say that they are absolutely necessary, but they are always put there as a case of protection. I don't think the county would build a road without it. It is common construction. Assuming that it were possible to construct a road through that country 10 feet in width, they would absolutely be as necessary, more necessary, in fact. It is a fact that on last Sunday, in company with yourself and Mr. Culver, and one or two others, I made a trip to this road in question for a special purpose. It was to inspect, not the main Malibu road, but the cross road that goes in about where the alfalfa patch is. Also to ascertain if it were as safe or practicable to build a road without bridges over the gulches. I have said that each one of the points where the bridges are specified is in this general summary. I don't think it is possible to build a road above the main route of the proposed Malibu road without constructing bridges at those points. The road which it is impracticable to build without bridges is the Malibu road, the main road. That is what it was inspected for, with a view

1831 of ascertaining about bridges. On Defendants' Exhibit 5 that we had this morning I note there are some thirteen different points named in the summary—that is, thirteen different bridges enumerated in the summary. And the points at which each of those bridges are to be located is specified in the body of the estimate. Those are the points I visited with you on Sunday with a view to ascertaining the necessity for the
1832 bridges at those points.

Mr. Anderson: Now, calling your attention, Mr. Howard, to Plaintiff's Exhibit "A," which is entitled "Malibu road from east line of Malibu Ranch to west line of Los Angeles county, estimated cost of constructing a 10 foot roadbed within the proposed right of way shown on county surveyor's map No. 8071, sheets 1 to 4," I will ask you if you have seen that document before? A. Yes. I saw it also in con-
1833 nection with the various other profiles and documents at the surveyor's office.

Q. I will ask you to state whether or not, in your opinion, that document in itself and of itself contains all of the elements necessary for the construction of a 10 foot road, or any road, across that main line proposed right of way

Mr. Burnell: That is objected to as incompetent, irrelevant and immaterial; and upon the ground that it is calling upon one expert wit-

1834 ness to give his opinion as to the correctness of the reasoning of the other one.

Mr. Anderson: I am not asking that. I am asking if it contains all the elements.

The Court: Read it, Mr. Reporter. (Last question read.)

Sustained. It does not appear that the document is intended to contain all the elements.

Mr. Anderson: I will ask you this, Mr. Howard: Could a practicable road be constructed
1835 from the data and that data alone contained in that document?

Mr. Burnell: Same objection.

The Court: Same ruling; sustained.

(Exception No. 12.)

Q. By Mr. Anderson: From your knowledge as a road constructor, and from your experience, state whether or not a road 10 feet wide could be constructed across that main line
1836 right of way with those elements only that are contained in that document.

Mr. Burnell: Same objection.

The Court: Same ruling.

(Exception No. 13.)

Mr. Anderson: Are there any elements necessary for the construction of a road—I will put it this way: Are there any elements necessary to bring the road to grade and to make a practicable road along the main line of the right of way, proposed right of way, other than pipes

1837 and grading? A. Why, I think it would be necessary to have bridges, in my opinion. I don't think a road can be built along that right of way without bridges or without the headwalls. On this particular occasion I visited the proposed right of way for what is called the Alisos Canyon road. I had not visited it before to go over it. I did go over it on this occasion. I went over it from the Malibu road north to the line of the Malibu Ranch. The data obtain-
1838 able with regard to this road is very limited. There is no line marked out and in fact they have never made any estimate with regard to the yardage. This is a very bad piece of road, very difficult to construct. It is through a very rough country and all of the way in rock and unless the center line was very well described, one could not form an opinion, excepting that it was a very difficult road to construct. It
1839 would be very difficult at this time to give any estimate of what it would cost to construct such a road. It would be more of a guess than anything else, it would simply be an opinion, having built a great many roads in the mountains. It would be very expensive. In comparison to the building of the Malibu Ranch road and taking into consideration the precipitous character of that canyon, I should judge that there would be—a fair approximation—that there would be about twenty thousand cubic yards to the mile

1840 of rock to move. To move it would cost $2.50 a yard today.

Cross-Examination

By Mr. Burnell:

Q. You have been up on this proposed road but you have not been over the proposed road to make any such careful estimate as you would make if you were about to bid on the contract? A. I proceeded exactly the same. I have not bid on it, I should not bid on it with the information I have at present and I would not be expected to. I am not a civil engineer. I am a practical builder.

1841

Q. Isn't it a fact that there is frequently a difference of opinion between practical road builders as to the advisability of putting roads in certain locations?

Mr. Anderson: That is objected to as not cross-examination. I do not see that it has anything to do with this. He was not asked about the location of these roads.

1842

The Court: Objection overruled.

(Exception No. 14.)

(Continuing.) There is frequently a very great difference of opinion between practical road builders and contractors as to the cost of construction, particularly of a difficult piece of road. So, for instance, when you find a matter is advertised for bids, you find considerable difference in the bids. Each man in making his

1843 bid usually bases it upon the estimated cost of actually constructing the road plus a reasonable profit. And there is often a considerable difference in figures as to what that would cost. With reference to the labor in building the road, I told you that the labor would cost approximately fifty per cent higher at the present time than in 1916. That might be due to unusual and abnormal conditions in the labor market which existed probably on account of the pres-
1844 ent world war. It is a fact that that war has taken away a great many of the men of the ages and type of men that are usually used in this sort of construction work. As to this advance of 50 per cent in the price of labor, since 1916 in particular my attention has been called to it.

Mr. Anderson: Now, if the court please, at this time we feel that that is all the evidence that it is necessary for us to put in on this par-
1845 ticular feature that we have been trying, that is, the question of necessity and the question of location, with this exception, that through a misunderstanding Mr. Patton who is out of our reach, will not be here until tomorrow. I have explained to these gentlemen the situation and they agree that I may put him on then. It will possibly be a very short matter we want him for.

Mr. Burnell: Yes.

1846 Mr. Anderson: With that understanding, with this branch of the case we rest. Mr. Burnell has very kindly stated if we should find we have overlooked anything through inadvertence he won't object to our putting it on.

Mr. Burnell: Oh no; we are not going to try this case on technicalities or in a technical manner.

Defendants rest.

1847 PLAINTIFF'S TESTIMONY.

ERNEST F. DECKER,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

My name is Ernest F. Decker. I live in the Santa Monica mountains. My attention being called to this map which is defendants' exhibit
1848 No. 6, I can point out upon the map where my place is located on the Santa Monica mountains.

Q. Now, if I might describe this map to you somewhat, this purple line extending from the Ventura county line on the west to Las Flores Canyon on the east is the northern line of the Malibu Ranch. The line marked in yellow extending from Triunfo post-office on the north in a generally southerly direction is the so-called Decker road. The canyon marked Lachusa Can-

1849 yon is Lachusa Canyon; the canyon marked Nicolas Canyon is the Los Alisos Canyon. This canyon here (indicating) is Encinal Canyon, and these various red lines indicate what Mr. Scotton has testified are roads located to the north of the Malibu Ranch.

(Continuing.) I think I can locate the grade, about right in here (indicating on map). The place marked X to the north of the letter M in the word "Malibu," X-11. I have lived there in
1850 the neighborhood of 33 years. That is the place which has been referred to as the Marion Decker place. I have there, of my individual property, 200 acres; with my mother and sister, we have 540 acres. Of my 200 acres I have under cultivation approximately 75 acres. Of the 500 acres belonging to my mother and sister we have under cultivation 75 acres, I should judge, altogether. That is, altogether, my sister's and
1851 my own; my mother has no land that is under cultivation. Of the other land that we have that is not under cultivation there is possibly 100 acres yet that could be farmed if cleaned off of brush, rocks and one thing and another, and the balance is grazing ground for cattle and horses. I have cattle or horses on my land, 48 head of cattle and 12 head of horses. I haven't exactly a fence around my place, not entirely around it. I have a fence around some of it, a barbed wire fence running around my farming

1852 land, partly comprised of poultry netting 3 foot high and two wires on top—two barbed wires. That poultry netting runs around only a part of it, pretty close to a mile of it. Posts are buckhorn, posts I have put up myself. Where the fence is not poultry netting and barbed wire above I have simply two barbed wires, a two wire fence. It is, I should judge, about 4½ feet high. In the past two years I have had cattle
1853 there. Prior to the last two years I have never in my lifetime had anything to do with a cattle ranch. In my opinion the fence which I have on my land at the present time is sufficient to turn the cattle from my cultivated land. The condition of the land upon which my cattle graze is some of it rolling land, other is hilly, brush land. I am familiar with the land just to the south upon the Malibu Ranch, which is used for grazing cattle. Compared with that land, my land
1854 is approximately the same kind. Part of the fence that I have there upon my land, as a matter of fact, turns the cattle and part of it does not. Part of it near my house is practically down; been in there a long time, for a number of years and no care taken of it, and will not turn stock. The part that is up where I say I have two barbed wires, turns the cattle. Where the wire is tight it will turn cattle and horses.

The Court: That is poultry wire; it is woven

1855 wire? A. Do you mean the principal part—no sir, it is poultry netting.

The Court: What is it? A. Poultry netting.

The Court: It is not the same as woven wire fence as described by Mr. Otis? A. No sir.

Q. By Mr. Vallee: Now you say that you had 75 acres under cultivation and about 100 acres more that could be cleared and cultivated,
1856 is there any reason why you have not cleared or cultivated the other 100 acres in the past?

Mr. Anderson: Object to that as immaterial and purely speculative and self-serving.

The Court: Objection overruled.

(Exception No. 15.)

A. Why the principal reason that I have not cleared any more land is because I could not get my crops out without roads.

On the 75 acres under cultivation at the pres-
1857 ent time I have about 30 to 35 acres of beans; the balance is barley and oats and some corn. I have not yet harvested my beans this year. I had beans last year, possibly five acres. I could not say how many tons I got. Out of five acres I think I got in the neighborhood of 12 or 14 sacks of beans, I put them in very late and I did not get the crop I should have got. I took some of those to market, to Albert Cohn. I hauled them out across the country from my place to

1858 Triunfo post-office, and then to Los Angeles over the highway.

The Court: I wish he would describe how he got out of there. Just step down to the board. I don't want to interrupt the examination but I would like the witness to testify to that at this time.

A. (Referring to Exhibit 6.) Starting from my home here, crossing up through the summit, up in through here, by Mr. Vaughn's place and
1859 on out over through here, and then out over to the Mathieson ranch and then to the Triunfo post-office. After I crossed Mathieson ranch I crossed Russell ranch before I got to Triunfo. By Mr. Vallee:

In hauling the beans out I had a good two-horse team and spring wagon. I hauled at one time not over four or five sacks. One sack of beans averaged in weight 80 pounds. I have
1860 never attempted to haul more than four or five sacks, simply because the road is steep and rough and the teams would not pull over five or six hundred pounds at a load and get out in reasonable time and without injuring my stock. In my own family there are my wife and boy. My mother and sister do not live on the ranch; they live here in the city. They have lived on the ranch.

Q. When did they last live there?

Mr. Anderson: Object to that as immaterial,

1861 if the court please. It seems to me it don't make any difference when they last lived there, if they are not there now.

The Court: Overruled.

(Exception No. 16.)

A. Why, I should judge it has been in the neighborhood of 15 or 18 years, possibly more, that they have not resided there. There is a school house in that neighborhood. I don't believe I could hardly point exactly to it, on the
1862 map. From my place it is about 3 and ½ miles. In attendance at that school house I believe at the present time there is thirteen children. I have not always used the route that I have described at Triunfo post-office and over the state highway to Los Angeles. Up until August of last year I used the Malibu road and down the beach to Santa Monica. I don't remember the date I ceased using that road, but it was in
1863 August of last year. The reason I stopped going over that road is that the Rindge people closed the gates up and ordered us not to trespass on their land. I know how many miles it is from my place to the Triunfo post-office over the road: It is about eleven miles. From Triunfo to Los Angeles over the state highway, I am not positive as to the distance, but I believe they call it about 40 miles, or 41 miles—near there.

1864 Mr. Anderson: If you would like me to do so I think I can state.

Mr. Vallee: Very well.

Mr. Anderson: It is exactly 39 miles from the Triunfo post-office where the gate is, going into the Russell ranch, to the center of Los Angeles, First and Broadway.

Mr. Vallee: Mr. Anderson states that it is exactly 39 miles from the Triunfo post-office
1865 where the gate is, going into the Russell ranch, over the highway to the center of Los Angeles, to First street, Los Angeles. We will stipulate that is correct.

(Continuing.) From my place down through the Rindge Ranch and over the Malibu road to Santa Monica, it is 28 miles; to Santa Monica from my door. There is an old way down there from my ranch to the Malibu road; our old wagon road that runs to the coast from my
1866 place. That is the road I am estimating the distance over. It comes down the Encinal Canyon.

Mr. Anderson: It is the road you saw going up the mountains, Your Honor. It was pointed out as the Decker road.

The Court: Yes, I remember it.

Mr. Vallee: Now, will you describe in detail the road from your place to Triunfo, as near as you can? Make as good a picture of it for the court and jury as you can, starting at your place

and going to Triunfo. A. Starting at my place we have for two miles pretty stiff grade, almost all up—straight up in places. From the two mile point there is possibly a stretch of road in the neighborhood of two and a half miles or more that is practically up and down, or in places level, to Mr. Vaughan's place. That is, there is more down hill, I will say, than there is up at that point. From Mr. Vaughan's place out on the county road, that was built in last year I believe or year before, the road there for a stretch of two or three miles is a very good road; but taking from that point—from Malloy Point to the bottom of the hill, the road in the worst places averages 30 to 31 per cent grade, as I understand, and it is almost impossible for a team to pull more than five to seven hundred pounds. It will pull them to death, 700 pounds, if kept up steady every day or two. From the bottom of the Malloy Hill we go down through by the Little Lake out into the Mathieson highway, and the road is a fairly good road from there on to Triunfo post-office. I have been over the road from the point on the map (Exhibit 6) where the X-5 appears, to Cornell. From that point that you mentioned is almost an impassable road, I will say, until you get to Bess Culter's place. That would be in the neighborhood of this vicinity, I should judge (indicating on map, Exhibit 6) where appears

upon the map the letter N in the word "Santa Monica Mountains;" from there on to Nigger Hill is an up and down road very rough in places. There is pieces, of course, that is smooth—that is, what I mean, through some portions of flats until you come to the summit of Nigger Hill. Nigger Hill, I will say is almost impassable at times, especially in the winter time, and is a very hard road even at the best in the summer time, the grade, I suppose, ranging from a percentage of 12 to 15 per cent to a percentage of 37 to 40 per cent; from the bottom of Nigger Hill out to Cornell it runs out on a down grade of possibly 8 or 10 per cent to Cornell, running to that in some places. I have been over the road from Cornell to Triunfo; it has been several years since I have been in there, but I remember that it is an up and down road through the canyon from Cornell up to Russell ranch, and at times is impassable on account of high water; and from the Russell ranch, of course, is on the highway. The condition of the road from the Decker place to that road which we called the Decker road, in the winter time, and through the winter season I will say is impassable almost. I have been out over that road. I went out over that road last winter when it was pretty hard to get through on foot, and impassable with a saddle horse. Prior to the time that the road was closed into the Malibu Ranch,

1873 I traveled over the Malibu Ranch road through to Santa Monica and Los Angeles, all the time, to and from my ranch for 32 years.

Q. Do you know how many persons there are actually residing on that property in and around on the plateau, which we have referred to as the Decker plateau, to the north of the Malibu Ranch? A. I don't know as I can tell you the number. There is a lot of people up there which live in that immediate vicinity.

1874 Q. Just name us as many as you can, showing upon the map the location of their property where they are living and who lives on the property.

Mr. Anderson: West of Trancas canyon?

Mr. Vallee: Yes.

Mr. Anderson: Between what canyons?

Mr. Vallee: Between Trancas canyon and the Ventura county line. Just step down so that

1875 you can point out where they live. A. I don't know as I can point out just where they live; right north of me is Lulu Carr's place; I think she has 120 acres. There is no one living on the place with her at the present time. I don't believe she is residing there at the present time. She was there a few weeks ago but not at the present time. I don't know whether she came to stay or not, but she had previous to this lived there within the last six or eight months, lived there right along for two or three years. I sup-

1876 pose she has in the neighborhood of ten acres in cultivation. Her mother owned 40 acres just below her and they were together several months. Her mother's name is Mrs. McClellan. I say that her mother had 40 acres adjoining her—I think her mother had been living there entirely—I don't know whether she has been there right along but she has been back and forth on the place a good many times in
1877 the last year but I don't know as she has lived there. The next place to me would be Mr. Humphrey's place, somewhere in this locality (indicating on the map, Exhibit 6), I cannot figure it out just where. His wife is living with Mr. Humphrey and I believe at the present time his daughter. I believe they have 160 acres. I should judge in the neighborhood of 25 acres in cultivation. The next person, I believe, would be southwest of him, Mr. Weiss' place. In Mr.
1878 Weiss' family I think there are three children, himself and his wife. I couldn't state how many acres of land Mr. Weiss has; I think they have 80 acres; I am not positive. Maybe more. I suppose he has ten or twelve acres under cultivation. They have not any cattle or stock grazing on the balance, I believe. The next southwest of Mr. Weiss would be Mr. Campbell's place; I think so. He is a single man. He has 160 acres. I think at the present time he is not living there, possibly seven or eight years since

1879 he has been there. Right south of him, south of Mr. Campbell's place is my brother's place. He owns 150 acres of land. His name is Charles M. Decker. There is a wife and six children, I believe. I think they have in the neighborhood of 45 acres, 40 or 45, in cultivation. Besides the 150 acres they have 120 acres or 140 acres more, I believe. My brother has some cattle and some horses. I think they have ten or twelve head
1880 of cattle and three or four horses. The next place would be north or west of my brother's place; it is Mr. Keppler's place; Mr. Keppler, his wife and a child, I believe. They have 160 acres. I should judge they have got 25 or 30 acres under cultivation. Cattle—yes, but I could not say how many they have, they have quite a bunch. The next place would be northeast from Mr. Keppler's, Mr. Malden. I think Mr. Malden is in the neighborhood of this section, being
1881 the point on the map close to the letter "K" in the word "fork" in "Arroyo Sequit east fork." In Mr. Malden's family is a boy—one child. I believe he has 160 acres; I am not positive as to that, though. I think he has in the neighborhood of 15 or 18 acres under cultivation, possibly more; I couldn't say as to that. The next family I believe is Mr. Parks in the Sequit Canyon. I am not positive as to just exactly the position, whether it is the east or the west, but I think that he is in the west fork of that canyon.

1882 I am not positive as to that. I couldn't say how many in his family; I don't know how many there are; he has a wife and children. I couldn't say as to how many acres he has. The next I think would be Mr. Kelso's place, I believe, in section 9; I think he is a single man. He has 160 acres. I think he has in the neighborhood of 20 acres in cultivation; I think no stock or cattle at present. He has had some horses there, I don't know how many, but I know he has been
1883 plowing some land. There are some families there that I couldn't say; in fact, I don't know just exactly where they are located. There is Louis Berger, but I can't say. He is in, I guess, the east fork of the Sequit Canyon, away up, but I could not tell just where he is. I do not know how many he has in his family. I think he has a wife. I couldn't say as to how many acres he has. The next family that I remember
1884 is Mr. Kielhofer's place somewhere here (indicating on map, Exhibit 6). He is somewhere, I believe, in the east fork of the Sequit Canyon near the summit of the mountain. It would be on the south side of the summit. In his family he has, I think, a wife and child only. I believe he has 160 acres. I don't think he has any cultivated as yet. The next family is the Mason place or old Drake place. It is in the Sequit Canyon. I think it would be in the east fork of the Sequit Canyon, too. I also believe the

1885 Ed Lewis place adjoins the Mason family, just a man and wife. I don't believe I can tell you how many acres he has; they have quite a bit of land there. Mr. Lewis does not live upon his property; in fact, I don't believe that they have lived there for quite a while. As to the next place that I remember, there are several more down in that canyon, but I don't know who they are. They are newcomers that have moved in there recently, and I couldn't say what they have
1886 or who they are.

Q. Can you tell us of any other families up in this plateau north of the Malibu Ranch between the Trancas Canyon and Ventura county line? A. Mr. Fitzpatrick.

Q. Is he in Ventura county or Los Angeles county? A. In Ventura county.

Q. Any one else? A. Mr. Mundell.

Mr. Anderson: Wait a moment. We object
1887 to any examination of this witness as to those people who live in Ventura county, on the ground that there is no showing here that they have present access to any outlet that connects in any way with the proposed roads in suit, or that will connect when the proposed roads in suit are established.

Mr. Vallee. It is not connected up as yet. We assure Your Honor that we will connect it up.

1888 The Court: Do you expect to show the connection?

Mr. Vallee: We expect to show by witnesses who live in the Yerba Buena district that they have means of access to the proposed road.

Mr. Anderson: That does not have to cross private lands?

Mr. Vallee: Over a highway to the contemplated road.

1889 Mr. Anderson: If you expect to connect that up, we withdraw the objection; but we reserve the right to strike out unless it is connected up.

Mr. Vallee: You say Mr. Mundell?

A. Mr. Mundell. (Continuing.) He lives in Ventura county. It is not far from the Ventura county line, or the northwest corner of the Malibu Ranch that he lives; I couldn't say as to just exactly the distance. I don't believe it is over two miles—a mile and a half or two

1890 miles, somewhere around there. In Mr. Mundell's family there are several children; I don't know how many; possibly four or five children. Mr. Lane lives in Ventura county. I think he has a wife; I am not sure but what he has one child. From the northwest corner of the Malibu Ranch I think that they are over quite a ways. I am not positive as to how far, but approximately I believe they are in the neighborhood of three miles—two to three miles.

1891 Q. Is there anyone else that you remember of?

Mr. Anderson: Of course, my objection goes to all of these.

Mr. Vallee: Oh, certainly.

A. There are several other families there I know of that live there, but I can't state their names. The Kincaid family lives on the west side of Trancas canyon. I can not say that I
1892 know anybody else who lives on the land. Mr. Vaughn lives about a half a mile west of where the cross-road goes to Cornell, the east and west road, where the road branches at X-5 on the map. There are in Mr. Vaughn's family three, I believe. I think they have something around possibly 200 acres. I think they have about 30 acres in cultivation. He has some cows, I believe, and horses. I think he has four head of cattle and three head of horses. I know a man
1893 named Boden. He lives in back of Mrs. Haney's place, or in that vicinity. I believe she is on the north side of the summit. I am not positive as to that. I do not know how many other people there are in his family. I know his brother, Melvin Boden. He has a place near the vicinity of his brother, whether on the north side or south side of the summit, I could not say. Mr. Haney's place is on the south side of the summit. It is east of Trancas Canyon. Mrs. Haney's place, with reference to the Vaughn

1894 place X-5, is possibly about two and a half miles from Vaughn's place on the same road running east and west to Cornell, on the road, about two miles east of Melvin's place. She has two boys, I believe. I think they have 200 acres. I could not state how many acres she has in cultivation; approximately 15 or 18 acres. I know a man named Herron. His place lies directly east of Mr. Vaughn's place at the summit of the hill or Shirley Grade. It is on the south side
1895 of the summit. I could not say how many there are in his family. It is about half a mile, I should judge, east of X-5, Vaughn's place. I believe he has 160 acres, possibly ten acres in cultivation. I don't think he has any stock. I know a man named Thew. He lives at the head of, or branch it would be—it would be the left fork of Trancas Canyon, possibly two and a half or three miles north of the north line of
1896 the Rindge Ranch, about three quarters of a mile south of Mr. Vaughn's place on an air line. In his family I believe that there is himself and wife and two children, I believe, or two young ladies. He has 160 acres; I should judge he has 12 or 15 acres in cultivation. He has some horses; he did have four head. I know a man named Auld. His place lies directly north of Mr. Thew's place. I believe that his place and the Vaughn place adjoin. I think it would be on the south of Mr. Vaughn's place. He has no

family. I think. He has 40 acres, I believe. I think he has none in cultivation. I do not know whether he has any stock. The nearest store at which I could purchase feed for my horses and stock, which I have to purchase, is at Los Angeles. The nearest physician is at Los Angeles. There are no physicians down at Calabasas that I know of. Santa Monica is the nearest if we could get there. I couldn't say as to whether there is a doctor at Camarillo. At the time I have traveled down over the Rindge Ranch during the years which I say I went down that way in going to Santa Monica and Los Angeles, I observed a railroad in operation. I never made the request of anyone connected with that railroad, to ride upon it. I never saw any passenger trains being operated over it. I never saw any freight trains, more than the Rindge people hauling their grain to the Malibu warehouse. To propel the railroad they used gasoline power at times when I have seen them; and at other times I have seen them use horse power—animal power. During the time that I went over the Rindge Ranch going to and from my home, I never at any time took any farming implements or other property of the Rindge Company or Mrs. Rindge, or any property upon that ranch. I never to my mind seen anything that I took or had anything on my place that the Malibu people could claim. I never took anything. I

never broke any of the fences upon the Rindge property or killed any of the Rindge cattle, nor ever attempted to. I never stopped at the Rindge house. Now, I will take that back; I did at one time when I was a small boy. It is now 25 years ago or 20 years ago. That is the only time. As to the road from my place out to Triunfo which you term the Decker road, for three months last winter the road was washed out so badly that you could not get across except by foot, what I call impassable to get by with provisions. To go from my place to Triunfo and over the so-called Decker road and into Los Angeles with a two horse team and a spring wagon, driving continuously, it would take 12 good hours without killing the team. It took me to go from my place to Los Angeles down through the Rindge Ranch, through Santa Monica and into Los Angeles, about nine hours.

Cross-Examination

By Mr. Newby:

To go back to my home from Los Angeles over the old road takes longer than it does to go down, possibly an hour and a half longer. So it would take ten and a half hours to make the return trip with the same team I used going the other way. The old road was all the way from 15 per cent grade to 30 per cent grade. The elevation at the house is about 900 or a thousand feet at my house. The elevation at the Tecum-

1903 seh Pass, I suppose, is in the neighborhood of one thousand or twelve hundred feet. I don't know Tecumseh Pass by that name unless you refer to the Decker road coming up to the Malloy place; that is known also as Tecumseh Pass. I don't know as I can point exactly to that on the map. I suppose it would be about at the summit, about in here (indicating). That is just southwest of the letter "S" in the word "Santa Monica." I say the elevation at my
1904 place is 900 feet to a thousand feet, and it is only about 300 feet until you reach the summit; it may be more; I couldn't say as to that. It may be more than what I have stated. I could not say positively. I have been over the road a good many times although I have never figured as to how far or what the altitude is at that point. I did not examine any of the government maps or county maps to ascertain the elevation
1905 at any point on that road. The place I indicated there as the summit is the highest point on the road going from my home to Triunfo post-office, I believe. After you pass the summit it is not a reasonably good road except when it washes out in the winter time; it is the steepest part of the grade from that point on. After you pass the summit going north into the Mathieson ranch is the steepest part of the grade. The grade there is in the neighborhood of 31 to 37 per cent; I have heard so, and taking it from

1906 teams pulling up with five or six hundred pounds and also seeing machines go up there, and I have thought it was about that percentage of grade, largely based upon hearsay and my ability to drive over it with a team. I have heard no engineer speak upon that. I do not know the percentage of the grade of the proposed Alisos Canyon road. I do not know that you have to reach an elevation of a thousand feet approximately from the beach at the north end of the
1907 ranch. I stated that the road from Decker's to Triunfo post-office last winter washed out for a period of about three months, in several places, on the new road that had been built; also the old Malloy grade was washed out badly. From Mr. Vaughn's place, X-5, going north, to the Malloy place is about 3 miles, I should judge. There was a stream of water coming down there that washed it out. It crossed the road in a
1908 great many places and also went the other way of the road. Those washouts could easily be taken care of by proper road construction. Where I traveled through the Malibu Ranch in 1917, there were sometimes washouts through there. I have never seen the time when I was unable to get down through the Malibu Ranch with a team. I sometimes went around by the beach on the sand. The road at times was washed out in places so it was impassable. That is true of all mountain roads. I men-

1909 tioned some points at which I stated that there were no supplies and no physicians. I never tried to get any physician at Oxnard; I never went that way, nor Van Nuys, nor Hueneme; all of those towns are closer than Los Angeles. I don't believe San Fernando is closer. I couldn't state exactly how many miles Van Nuys is from Triunfo. I believe, though, it is in the neighborhood of 30 miles. I also stated that
1910 Los Angeles was the closest place at which I could get feed. I have never bought any feed for my stock. I said that that was the closest place that I could get feed. I mean by that, for my horses when I came down to Los Angeles. I never attempted to go any other direction—any other way, because I had a home here in Los Angeles; I have a home here. I have lived here possibly 10 years altogether, off and on. That is one reason I desire to trade at Los Angeles
1911 where my home is. I raised enough crops on my place to feed my horses and cattle, so that I don't mean that I had to carry food-stuff for my stock into my ranch from Los Angeles. I never bought any feed for my stock. When I formerly traveled by the Malibu road I carried a larger load than I now carry to the Triunfo, all the way from 900 to 1200 pounds, both ways, either way I wished to go. Going up the old Decker road, 32 per cent grade, I could not always carry 900 to 1200 pounds. I have often

1912 unloaded part of the load and went back after it. I never tried to carry that much on the Triunfo, because I knew it was impracticable. By adopting the same precautions I could have. In speaking about the road from Cornell to Triunfo post-office I said that it was sometimes impassable from high water. I think it never is impassable from any other cause, with the exception of wash outs, which I have stated is a characteristic of any mountain road. I could
1913 not say whether the topography of the ground along that road is such as to permit of road construction above high water line. It possibly could be. At Nigger Hill the percentage of grade is 30 to 40 per cent for possibly a mile and a half. I think that is not so located that a roadway could be constructed there. The mountains at that point are so rugged, and rough that I believe it would take a lot of money
1914 to make a road, a great deal more than along Alisos Canyon. The only other difficulty is Malloy's grade.

Q. With the exception of those two points there would be no great difficulty in constructing a road? A. Do you mean to Malloy's place?

Q. From Vaughan's to Triunfo. A. I think there could be a road made that way, but it would cost a lot of money.

The Malloy Hill is north of Vaughan's. I think it is about three miles, possibly better. I

1915 do not know the elevation at Mr. Vaughan's place. I have stated that at the summit it was about 1200 feet. I don't really know how much lower Vaughan's place is than that; it is quite a little drop down to Vaughan's place; possibly 400 or 500 feet, 600 feet, maybe. I think Vaughan's place is higher than mine. My place is about 1000 feet, I think, I am not very familiar with that. I don't know if it is a fact
1916 that there is only about 200 feet elevation from Mr. Vaughan's place to the pass. I have never informed myself on that. I have seen automobiles on those roads, Fords, principally. I have seen the county surveyor's autos on the road. Those are Hubmobiles, very large car. I saw them go down within a quarter of a mile of my house; that is at X-11, on Exhibit 6, I never saw them at my brother's house, Charles Decker's. I only saw them on that road leading from Triunfo to my
1917 house here at X-11, and the machines had to be pulled out of my place to get back. It had to be pulled about two miles to get back. That was the Hupmobile, county machine. The Fords did not negotiate it going back; they had to be pulled out also a distance of about two miles. I pulled them out. I hitched to the machine two great big horses that weigh 3000 pounds. I couldn't state the weight of the Hupmobile. I was able to pull them up with the help of the engine.

1918 They are the same two horses that I used for pulling out this crop of barley.

Q. Will you please indicate on the map (Exhibit 6) the place to which you pulled this Hupmobile? A. I can do it approximately anyhow. About from this point X-11 to the summit of Barney's knob, we call it. I think that it is about in this point or in the neighborhood here (indicating on map), a little east of the figure 16; somewhere in the neighborhood. I am not
1919 positive as to the exact spot. I suppose it is in the neighborhood of a mile up from Vaughn's place, or a little better, probably. After I pulled them to that point, then they went back without difficulty. They did not have any tire or engine trouble. The county chauffeur was driving, I believe, as far as I know, the chauffeur of the county attorney. I have farmed other than on this ranch. I have been a landscape gardener for several years; I was until a num-
1920 ber of years ago, for about nine or ten years, I believe, throughout this 32 years period. I have worked for several different farmers, here in this locality and also in the north, for a period of a year or so. With reference to the barbed wire fence which I say turns horses and cattle, I have some hogs but only a matter of eight or ten heads. I did have more. I would not say that a barbed wire fence would turn a hog. I had my fields fenced with

1921 netting to keep the hogs in. I think it would not turn sheep either. I would not say that it was a practical thing to fence a general stock ranch where there are horses and cattle and hogs, with a two barbed wire fence.

Redirect-Examination

By Mr. Vallee:

It takes me longer to go back from Los Angeles to my home through the Malibu Ranch than it does to go from my home to Los An-
1922 geles through the ranch, owing to the grade, when we come up the coast to traverse my grade in order to go to my home. It takes in the neighborhood of three and a half to four hours to drive from Triunfo to my place, and approximately the same time to go as to come. Last winter the road was washed out about three months. To go from my place to Hueneme at the present time I would have to go out to Tri-
1923 unfo and take the state highway down to Camarillo, and then down to Hueneme. I do not know how large a place Hueneme is. I am not positive whether the highway runs through Oxnard; I believe it does, or near there. I do not know how large a place Oxnard is. After I left the Hupmobile at Barney's Knob, I did not see the Hupmobile again. I don't know what became of it after it left Barney's Knob. I do not know what time they left Barney's Knob. I do not know what time they got into Los An-

1924 geles. I say I pulled a Ford out; the Ford went down to my home. The Hupmobile came about a quarter of a mile from the house, around the road. I pulled the Ford to the same place, nearly, Barney's Knob. No other machines have ever been close to my place, besides the Hupmobile and the Ford; both of those had to be pulled out.

Recross-Examination

1925 By Mr. Newby:

My brother-in-law was driving the Ford. That happened in the last week of the hunting season, just last month, this year, last August. When that road washed out and remained so about three months, it was not repaired for sometime; I don't remember the circumstances exactly but it was quite a while before it could be traveled. I don't know who repaired it; it was the men that lived there, and I think the

1926 county had something to do with the repair. I suppose it could have been repaired sooner if we had had the money to do it. I think at that time men were very short to get, laborers, to come in and work on the road. I think that was the main reason.

Q. What period of time did the water itself remain there, making it impassable? A. I said it was there for pretty nearly a month at one time, but it was raining, so it would have been impossible to repair it. After that it could have

been repaired. It was sort of drying out. The time that I said I took about 12 hours to drive from my place to Los Angeles I was driving a team, a horse and a buggy. I made that trip just once; it has been a number of years ago; I don't remember; it was when I was a young fellow. I suppose in the neighborhood of 25 years ago; I was a boy at that time. I have lived in that vicinity for the last 33 years. I stated, I think, that I have been back and forth through the Malibu Ranch. This time that I went through the Triunfo, about 25 years ago, I was driving a team of horses and a buggy; a small buggy. I had no load in it. I suppose it was about 20 years ago, nobody with me. I have never driven that trip since, from my place to Los Angeles. When I took those sacks of beans was last year. I took them to the store but could not sell them there at that time. That was not caused by the condition of the road. The road that I took those beans over was the Triunfo road. I had a wagon. In fact, we packed the beans over toward this side of Fred Vaughn's place to the Malloy place, and there I had a wagon and went on down to the highway. I didn't drive from there on down. I sent them down in a truck from Triunfo. So that the beans were carried from this side of Mr. Vaughn's place, over the pass, past the new

1930 road to the Malloy place, and there I took the rig and hauled them down.

Q. So your estimate of the time it would take to go from your place to Los Angeles over the Triunfo road was based on an experience you had about 20 years ago? A. That road I didn't travel at the time. I went over through the Shirley grade of the road down the Nigger Hill, which was merely a trail at that time, impossible for a wagon to make such a trip.

1931 Q. Where did you go with the buggy about twenty years ago that took you 12 hours? I wish you would describe that road. I am confused about it. I would like you to make it clear. A. I went through—taking the buggy I didn't exactly go from my place—I will state that here—but we stayed at the Culter place over night, or I did, and went from the Culter place down the old Nigger Hill trail up through

1932 Cornell and up to Russell's ranch and out the old highway to Los Angeles. We started about the Culter place, I should judge about here, just east of the figures 12 (Exhibit 6) and took this road out through the Nigger Hill, I suppose in the neighborhood of this vicinity (indicating on map) Sierra Canyon road, and out through Cornell. After I got to Cornell I went then up this canyon to the Russell ranch and out the highway. I traveled the road east via Cornell. As a matter of fact, I have never tested out the

1933 time it would take to go from my house via Vaughn's place, the Malloy Hill and Triunfo post-office to Los Angeles.

Redirect-Examination

By Mr. Vallee:

I stated that last year when I took these beans out that I packed them. I packed them on a horse.

Q. You said that you could take the load when you used to go in through the Malibu
1934 Ranch and up Encinal Canyon to your place—that you used to take the load to the foot of the grade in Encinal Canyon and unload part of it and take part of it up and then come back and get the other part. How far would you have to go from the point at which you unloaded to your home? A. Why, I suppose a mile or a mile and a quarter or better.

Q. You stated that if you came in from Tri-
1935 unfo with the same load that you would also have to unload it. Now, at what point would you have to unload upon the road from Triunfo into your place? A. That is only that trip in particular. I mean in taking a load in the last year I mean that we had to unload at the foot of the Malloy grade in order to pull the grade. That means a time of five or six hours to come back and get the balance of the load from that part of the grade. The foot of the Malloy Hill from my home is about eight miles; I would

1936 have to come back the next day to get the load that I had left—go clear on in the eight miles and the next day come back and get what I had left. Going one way I would have to go a distance of a little over a mile after I unloaded, and going the other way to Triunfo I would have to go a distance of about eight miles.

Recross-Examination

By Mr. Newby:

1937 The Malloy grade is what prevented me from carrying the load across at times.

Q. What was there to prevent you from taking the load out that you had at the foot of the Malloy Hill, then unloading part of it and taking the portion that you could not carry across, and coming back after the other, without going the 8 miles to your house? A. Simply because it you got there in the evening you could not feed your stock; you could not haul

1938 hay in order to come back there; you would be one or two o'clock in the morning getting home.

(Continuing). I figured out when I got to the Malloy Hill that I would simply take what I could get across and come all the way back the next day and get the balance of the load; I have done that on several different occasions, possibly eight or ten times during the last year, hauling provisions principally, coming in from Triunfo to my place. I had nothing to haul out from my place to Triunfo. Coming from Tri-

1939 unfo I had a load of groceries. I would many times take them to the bottom of Malloy Hill before unloading—on the north side of Malloy Hill; then I used to leave them there and then went on home, taking a part of the load. Then I would go entirely to my home and then sometimes return the next day for the balance. It wasn't possible for me to have taken the groceries across the Malloy Hill and then gone back and taken them all home. Lots of times I had
1940 in the neighborhood of 1,000 pounds—I don't remember just how many times, five or six or eight times—I don't know. I am living there. I have lived there for the past four and a half years steady.

Wednesday, October 9, 1918,
10 o'clock a. m.

(Stipulated jury present.)

1941 RALPH E. KINCAID,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as folows:

Direct Examination

By Mr. Vallee:

I live up in the Santa Monica mountains, in Trancas Canyon, on the west side. I have 120 acres of land there. Other members of my family have, I think, about 2,200 acres. At the present time we get in and out of our property by packing over to Ernest Decker's and we go

1942 from there to Triunfo, over the Triunfo road; that is the road from Ernest Decker's through the Mathieson ranch and then the Russell ranch to Triunfo. I have no road from my place now to the Decker property; we go over our own property which runs pretty near to Ernest Decker's house. I have traveled over the road from Ernest Decker's to Vaughan's and from Vaughan's as far as Cornell. I have never gone from Cornell to Triunfo. Describing the road
1943 in detail from Ernest Decker's place to Triunfo, via Vaughn's place and the Mathieson ranch, when we leave Ernest Decker's there is about between two and three miles of pretty stiff grade. Then the road goes down hill to Mr. Vaughn's, possibly a mile and a half or two miles. From Mr. Vaughn's for about two miles it is pretty good road. Then you start on grade. I don't know what they call that grade;
1944 it is the new road that was fixed last year. You go down to the Malloy place and from the Malloy place down it is a very steep grade into the canyon. You go down that canyon—that is in the Mathieson ranch—and through the Mathieson ranch, which is pretty level and through the Russel ranch to Triunfo post-office. I have been over that road, in all, probably thirty or forty times. I have lived up in the Santa Monica mountains pretty nearly a year this time. Describing the road in detail from Vaughn's

1945 place, the point X-5 on the map, Defendant's Exhibit 6, to Cornell, leaving Mr. Vaughn's place you go down a fairly steep grade into a canyon; then you go up another one about a mile or mile and a half to Mrs. Haney's place; then it is not so bad for two or three miles until you come to the summit of Nigger Hill. Down Nigger Hill it is very steep, something like the Malloy grade, if not worse, to Cornell. I have hauled loads over the so-called Triunfo or Deck-
1946 er road. I can haul with a two-horse team and a spring wagon from Triunfo to Ernest Decker's about 600 pounds, I think that is about all the team will take up that grade; I refer to the Malloy grade and a good many other pitches on the road which are just as bad—short ones. I have not hauled any loads over the road from Vaughn's place to Cornell. I have cattle upon my place; there is 24 head there at present. I
1947 have had more in the past; two years ago we had about 50; just one hog, no sheep. I have a fence around the place, pretty near all around. That fence was constructed, part of it, last year, and part of it the year before, I think, a three wire barbed wire fence, buckhorn posts, put up myself, cut there on the place. Our property adjoins the Rindge property. Prior to the construction of this three barbed wire fence, there was not any fence between the Rindge property and our property. The cattle used to come up

1948 on our land from the Rindge property. There has been no Rindge cattle come through the fence since I am there. The fence upon our land has turned our own cattle. There is a trail from my place to Ernest Decker's. It will be from the proposed road through Los Alisos Canyon when it is constructed, about four and a half miles, I should say, or five. The green mark, X-13, is about where the house is. I live there; that is on the Kincaid property but not on my
1949 own particular property. My own particular property is about the corner, the southwest corner of 22, and the northeast corner of 27; and then across there (indicating on Exhibit 6). That house is right here, in this corner of the ranch, about 10 feet from the Malibu line. The trail goes across to Ernest Decker's barn,—not straight, but it starts right over the hill and goes pretty near to Ernest Decker's property.
1950 It crosses our property, not entirely; the last quarter is on Decker's; our division fence is about a quarter of a mile from his barn. The only intervening property is either the property of my family or Mr. Decker's property. If this Alisos Canyon road were constructed we could drive our cattle out through this proposed road and down the proposed road. By the proposed road I mean the coast road, what has been described here as the main Malibu road. Starting from my place, upon the map, I would go with

1951 the cattle from the point marked 13-x upon the map, over the trail I have described to Ernest Decker's, being X-11, to this point (indicating) marked in yellow upon the map to its first point of intersection with another yellow line indicating a road, and then on that road. The road which intersects with the road from Ernest Decker's going in a westerly direction over to this proposed road, continuing in a southwesterly direction with the point of intersection with
1952 the proposed road; then down that to the beach. When I got to the beach I could drive our cattle down if they would permit it. I could drive them down the beach if permitted. We could drive them down the Malibu road, I suppose.

The Court: You don't mean that you could drive them down the beach? A. That is what I did mean originally, yes. I did mean that.

The Court: It would not be possible to drive
1953 cattle down the beach and over the cliff. You don't mean that, do you? I want to know just what his idea is, gentlemen, about the means of access. A. They would have to be taken on the road in a great many places.

The Court: How would you get back on to the main Malibu road? A. Well, I don't know how close to the beach the main road goes. If it does not go close to the beach, you could not. Assuming that the proposed road is constructed down Los Alisos Canyon, right straight down

1954 to the beach, ending at the water line, I would drive them on the beach if I could get off of it again at those cliffs. I have gone down through the Malibu Ranch. The last time I went down through it was a year ago last April, I think. Prior to that time we had gone down over the Malibu Ranch. Traveling over the Malibu Ranch I have never taken any of the Rindge property or cattle. I have never broken down any fences.

1955 *Cross-Examination*

By Mr. Anderson:

I am 37. I have been living in that cabin up there for a year; it is a two room cabin. A man named Shuey lives there besides myself, a one-armed man; the hired man on the place. I have lived there continuously. In going out through the Triunfo, the worst place that I find where I have any difficulty with a load is

1956 at Malloy Hill. There are several other places of steep grades. There are two right by Mr. Vaughan's house. Those two are on the south side of the mountain. You encounter the grade there when you come from Triunfo. You have two short, bad grades. The first one, this side of the Vaughan house, the percentage of grade is 20 or 25, maybe 100 feet long. The next one is 15 or 20 per cent. Its length is about half a mile, steep, having 15 to 20 per cent grade, pretty near. There was one about 100 yards

1957 long just to the east of Barney's Knob. The percentage of grade there is about 25 per cent. I don't know the percentage of grade at Malloy Hill, but I should say, 30 or 35 per cent. The three grades I have spoken of are not as difficult as the Malloy Hill.

Q. Now, with proper road construction and grading those could be relieved considerably?

Mr. Vallee: Objected to as incompetent, irrelevant and immaterial; no foundation laid.

1958 The Court: Objection sustained.

Exception No. 17.

Prior to the time I went to live on this property, about a year ago, I was up there about three or four times a year. I always went through the Rindge Ranch, for about 25 years or more. I couldn't say that I have been there on an average of three or four times a year for twenty-five years; for the last ten years I have

1959 been up there on an average of three times, and the five years preceding that, I couldn't say; the five years preceding that I couldn't say; the five years preceding that, I couldn't say. I was always there as much as once a year during the preceding 15 years, to exceed that. It is not a fact that when I went up there I went up for hunting purposes only. We always had stock in the pasture, in Decker's place. We did not have that 2200 acres place the preceding ten

1960 years. We got it in 1905. Since then we have not used it for any purposes excepting stock, but just to raise hay, I mean cultivated hay, barley, on the 2200 acres, possibly. We used it entirely on the ranch for that small herd of stock we have, and never have attempted to take it out to the market. We have never taken our stock out to market in any other way than over the Rindge Ranch—never have tried;
1961 never had occasion to; we only have about 24 head up there now, just cows. No other brothers of the Kincaid family reside on that place. My brother and his wife did a year and a half; I think it was in 1905 or 1906. I had another brother that resided there for—I don't know how long—it might have been a year. This brother I refer to was a post-man in Los Angeles. His family resided there while he was performing his duties, his wife and the boy. I
1962 think part of the fence was built two years ago and the rest was built this last year. It is just the line of the ranch; it is not a cultivated field. The character of the shrubbery and feed, on one side, is about the same on one side as the other, no difference between the general territory, not cultivated on one side or the other. We have never built any more than a line fence, excepting some cross fences. It fully enclosed our place, where we farm. From the Malibu ranch that is half a mile. That is about 20 or

1963 25 acres. There is a fence entirely around that, three barbed wire and buckhorn posts. That is the only enclosure, actual enclosure in all that 2200 acres, excepting cross fences up around the house. That is the only thing that is actually enclosed on all sides. This line fence that I speak of, I guess, is about five or six miles. There is nothing to prevent cattle going around either end of it. It is between our
1964 property and the Rindge property and the west side of the place is fenced and the north side of the place is fenced. When I said five miles, I meant all three sides. On the Malibu side I think about a mile. On the west side I should guess the line of fences there is over two miles. On the north side, a mile and a half or two miles. There is nothing to prevent the Malibu cattle going around on the east side and entering our premises. I built part of that fence
1965 two years ago and part last year. I got wire up there for it on a boat; took it up to Trancas canyon—or, no; I took it up—I won't say whether it is Trancas or Ramirez, two years ago; took it all up at once and carried it over the mountains in a wagon. From the beach, the road that we originally went down was on the west side of the Trancas Canyon. That is some distance from what we call Los Alisos. In going from my place to the Triunfo post-office I have never used a vehicle all the way. I got

1966 my vehicle over at Ernest Decker's. I have a buggy there and a cart at present. Not always for these 30 or 40 trips; sometimes I went in his spring wagon. I have never used an automobile there at all. Last year on that 20 or 25 acres we got about 15 tons of hay; I meant, this year. That land has been cultivated more or less ever since we had the place, since 1905 or 1906. Our land was taken up some of it timber and stone and some homestead. The place
1967 which I am living at was a homestead. As to the 2200 acres, I do not know how much of that was timber and stone claim and how much was homestead.

Redirect-Examination

By Mr. Vallee:

Q. Why haven't you more stock on your place?

Mr. Anderson: We object to that question
1968 as speculative, because the place where the stock is is not necessarily his place, but that 2200 acres, and he would be speaking for all the joint owners.

The Court: Overruled.

(Exception No. 18.)

A. As soon as the road was closed, I quit taking stock in. As soon as we could not go through the Malibu Ranch any more, I quit taking stock in.

(Continuing.) I quit using the Malibu road

1969 in April of last year because they locked the gates.

Recross-Examination

By Mr. Anderson:

I have never taken any stock out through the Russell ranch way. Before the road was closed we used to have anywhere from 30 to 40. I think there was about 47 head there once. That is the most we have ever had. We never have taken it down the Little Alisos Canyon. We
1970 took some down the Decker road or the Encinal a time or two, but our usual way of taking it out was down through the Trancas Canyon.

JACOB H. RICHTER,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I live in Township 1 South and 20 West,
1971 Section 10, Ventura county. The name of the place at which I live is called Yerba Buena school district.

Q. Will you point out upon the map (Exhibit 6), about where you live? I will first explain the map a little to you so you will comprehend it better. This is a photographic reproduction of the United States Geographical Map. The heavy purple line indicates the northern, eastern and western boundaries of the Malibu Ranch

6 6 1

property, except that the other purple places on the map indicate property that is owned by the Rindges, by which I mean the Rindge Company or May K. Rindge. The heavy green line indicates the boundary between Los Angeles county, lying to the east of that line, and Ventura county to the west. The yellow lines were placed upon the map by a witness in the case, Mr. Scotton, and indicate roads, according to his testimony. The green, irregular shaped mark upon the map indicates the Mathieson Lake. Where I am now pointing is the Ventura county line, and this is Russell Valley; and it is in testimony here that the territory on either side of the red circles just west of the Ventura county line, is the Yerba Buena settlement. With that understanding, will you please point out about where your property is located? A. I think I can. I live right in the center on this line, Section 10. I wish to announce that that location ain't on the map. I will tell you where I live . I have to tell you the other first, because it ain't there.

Mr. Burnell: Mr. Scotton is very familiar with this map and will show us where section 10 is.

(Mr. Scotton indicates on map.)

A. I live right here. My place is right near the center line of section 10.

The Court: Suppose we have that marked.

1975 (Mr. Scotton marks on map.)

Mr. Burnell: May I ask Mr. Scotton a question? The mark you have put on the map indicates what?

Mr. Scotton: The green cross that I have placed near the center of section 10, is in the west one-half of the east one-half of section 10. I have marked that with No. 14, Mr. Richter owning that land.

To Mr. Burnell: That is about where I live.

1976 Q. How long have you lived in that district?

Mr. Anderson: Now, if the court please, I object to that on the grounds that have already been stated; and, as I understand it, counsel have agreed that they will connect up or make a proper connection or foundation before they undertake to have any testimony from these Yerba Buena witnesses concerning their surroundings.

1977 The Court: He is laying the foundation now.

Mr. Anderson: Very well.

Mr. Burnell: We are laying the foundation now. Read the question.

Mr. Anderson: If it is a foundation question I have no objection to it.

(Last question read.)

A. Why, it is eight years in April. I own the property I live on, 160 acres.

Q. Now, I will point out to you this map, Defendant's Exhibit 6, the road that is shown

1978 as running from the eastern boundary of the Malibu ranch, by various curves, and near the coast, and ending at the Ventura county line. You see where it ends? A. Yes sir.

Q. Now I will ask you if there is any road by which you can get from your place to the Ventura county line at the place where the proposed Malibu road terminates

Mr. Anderson: We object to that unless the question is so qualified as to include the pas-

1979 sage over private property.

The Court: Objection overruled. (Read the question.)

The Witness: You said private property.

Mr. Burnell: No, that was interpolated by Mr. Anderson. My question is whether there is any road by which you can get from your property to the Ventura county line at the point where the proposed road terminates.

(Exception No. 19.)

1980 A. Over the Mondell road. I have been familiar with that road since I was there.

Q. Eight years. During that time has it been open to travel?

Mr. Anderson: We object to that, if the court please, on the ground that in this case they cannot prove public roads by user.

The Court: Objection overruled.

(Exception No. 20.)

1981 A. It was used up to the time that they closed the Malibu road; the Malibu people. That was over a year ago. Prior to that time and all of the time I have been living in the Yerba Buena district, the Mondell road has at all times been an open traveled road, with a wagon, used by myself and others, the whole settlement.

Q. Has anyone, prior to the closing of the Rindge road, or before the Rindge people closed
1982 it, ever prevented you or others, so far as you know, from using that road?

Mr. Anderson: We object to that. It is an attempt to prove a public road by user.

(Exception No. 21.)

The Court: Objection overruled.

A. Well, they asked us not to use it.

(Continuing). I could not state who they were but they were people on the Malibu Ranch. Apart from that no one ever prevented me from
1983 using the Mondell road. The road the Rindge people asked me not to use was the one on the Rindge Ranch. I don't know anything about whether it is a dedicated road or not; I don't know anything about that road; Mondell built it, that is all I know. The Rindge people closed the road over a year ago, but I don't know what date.

Q. In what way did they close it?

Mr. Anderson: (Interrupting). I don't

1984 know that there is any dispute. It seems to me unnecessary to go into that. It is stipulated that about that time—

Mr. Burnell: If it will be stipulated that the Rindge people about the 1st of July placed a gate across the road to the Ventura county line—

Mr. Anderson: No, we fenced it further west.

1985 Mr. Burnell: There is no need to go into that, then. You say you fenced it further west?

Mr. Anderson: Yes. We will stipulate that about the 1st of July, 1917, the Rindge interests entirely closed their ranch to users by any persons excepting with permission and that they have kept it closed as well as they possibly could since.

Mr. Vallee: Will you further stipulate that prior to the time they closed it, that the people

1986 in the various canyons had been using the road?

Mr. Anderson: No, those circumstances under which they were using it should be put in evidence, if there is any merit to it. As a matter of fact, for 10 years there was an injunction which kept the road open.

The Court: That stipulation covers the fact which you sought to elicit then, Mr. Burnell.

Mr. Anderson: Certainly—that the entire Rindge property has been closed to the public travel.

1987 The Court: And particularly that on the Ventura county line.

Mr. Anderson: All of it.

Mr. Burnell: We are not prepared to stipulate as to the closing of the road any further than the Ventura county line.

The Court: That is the only point under consideration now anyway. The stipulation goes to that.

1988 Mr. Anderson: It goes to that, and our contention is that we—

The Court: Do you insist on the stipulation as stated?

Mr. Anderson: I am willing to stipulate that we did close it about that point, but I don't wish to be bound by that, that we did not close it anywhere else.

Mr. Burnell. And by that point we mean the Ventura county line.

1989 (Continuing). Prior to the time of the closing of the road, I went to and from my place in Yerba Buena, coming to Santa Monica and Los Angeles, following the old beach road, through the Rindge property. I couldn't say how many times I have gone through the Rindge property in the last eight years, maybe a hundred or more times, I would think. On none of those occasions did I kill any of the Rindge cattle or any cattle on the Malibu Ranch, or any sheep or hogs. I did not steal any of the Rindge

1990 property. I did not shoot any of the employes or anybody else. I don't carry a gun either. I never in any way interferred with or harmed any property on the Malibu Ranch. Mrs. Rindge has never given me a meal; she has never made my bed with her own hands.

Q. Now, since the Malibu Ranch was closed to you, in what way is it possible for you to get in and out of your place?

Mr. Anderson: We object to that on the
1991 ground that the foundation has not been laid. There is no proof of any public road through the Rindge Ranch or public access to any road that is contemplated, so far as this Yerba Buena settlement is concerned, and we think it is encumbering the record until it is established.

Mr. Burnell: There are two answers I want to make briefly. The first is, that we think we have laid the foundation by showing that for a period of 7 or 8 years there was an open, trav-
1992 eled road which he used and others used without interference, and that at least raises the presumption—

The Court: (Interrupting). I think you are right. I don't want to hear any argument on it.

The Court: Objection overruled.

(Exception No. 22.)

A. Well, if the court will protect me, I will tell you.

1993 The Court: Certainly we will protect you.

A. We steal out across the other ranch. We have a legal notice not to cross that ranch, but I cross it anyway, the Guadalasca ranch. The Gudadlasca ranch runs up to Twin Peaks. This (on the map, Exhibit 6) is the mouth of Sycamore Canyon, but it is wrong. The line goes on this side of Sycamore Canyon. This is Twin Peaks, on the Boney Ridge (pointing at a point shown as a little ways west of what the map
1994 describes as Sycamore Canyon). The second point above is marked Sycamore Canyon (indicating.)

Mr. Burnell: Now, just point where the Guadalasca ranch is. A. There is the other corner (indicating on map).

Mr. Burnell: The other corner is indicated as the junction of two heavy lines, one of which goes in a southwesterly direction just above the
1995 words "Boney Mountain" there joining the line which runs from the state highway shown on the map just to the east of the elevation figure 1170 in a southerly direction to about opposite the letter "G" in the word "Guadalasca," and the third line meeting at that junction point, running from the junction in a southwesterly direction to the Pacific ocean at the mouth of Sycamore Canyon.

Mr. Anderson: To clear the record, we will

1996 withdraw the objection. I misunderstood the witness.

The Court: Now, what road were you describing where you say you steal out over, you used that expression and so will I. A. We steal through the brush. We do not steal over a road. We come out on top of the Conejo grade. Here is Round mountain; I suppose that is the road, I don't know, but we come out on Mr. Borchard's land. That road leads to Ox-
1997 nard. It goes to the state highway. We go over a short piece to the state highway and then along the state highway to Oxnard, strike the state highway east of Camarillo, and then to Oxnard. You can go that way or the other way, and the old road, down the Old Camarillo grade, you can go to Hueneme on the same road.

Q. Now I will ask you if there is another road or trail or way by which you can get out
1998 of and into your property since this ranch has been closed other than stealing out at night through the Guadalasca ranch

Mr. Anderson: Our general objection goes to all of that, of course.

The Court: Objection overruled.

(Exception No. 23.)

A. There is a foot path from a place down about the Mondell road, about the Mondell place, and from there over to Triunfo Pass and down over the Pass and when you get down to the

1999 Johnson place there is an undedicated road we get through, we get through there, and with permission go over the Russell ranch and to Triunfo post-office. It is pretty hard for me to point that out on the map, but I will try. It will be almost an impossible thing. From my place marked X-14, you go to section 12 and from there you go to the old Triunfo pass, along in here somewhere.

2000 Q. Do you think that this road line which Mr. Scotton put on as indicating the trail is the trail you speak of? A. That is Triunfo pass. This is Sandstone Peak, to the left of the trail.

Q. As shown on the map. A. Yes sir. There is probably where the Johnson place is (indicating on map).

Q. Indicating a point on the map west of the Ventura county line below the elevation figure 1728? A. Yes sir. Then we get out

2001 onto this road (indicating).

Q. Indicating a yellow line shown on the map from the figures a little below 1728, in a generally northern direction, to intersection with the road which is marked on the map, "Long Grade Canyon," striking that road at a point northwest from Mathieson Lake. A. We pass that. We walk right around that. Then we go that way, over here (indicating a road leading in an easterly direction, past Mathieson Lake through Russell Valley to the state highway).

2002 The post-office, Triunfo, is right in there; then we turn off through the Russell ranch; you turn off from the Russell place to Triunfo post-office, by permission. That trail I have described is very rough until you get over to Johnson's, and after that you can drive a team. You can not drive a team from my place over the trail. You can hardly lead a horse; you can hardly get over yourself in bad weather. I think the heaviest load you can take over on horseback I
2003 have heard of was only 200 lbs. I only heard of that, though. Not me—never took anything over on a horse. I never tried it. I didn't want to kill the horse. I would just as soon kill myself, but not the horse. I know how many people live in this Yerba Buena settlement, there was exactly 42 when I left the other day. There is a school there. There was exactly eleven children in the school. I counted them the
2004 morning I came. Living in that settlement before the Rindge people closed the Malibu Ranch, there was 82 when they closed the gate; in the school at that time there was 21. There was a post-office up there but it was closed on account of closing the road and getting nothing in. We couldn't get nothing in, that is, parcels post.

Mr. Anderson: I move that that statement of the witness be stricken out, that it was closed because of the closing of the road.

The Court: How do you know it was closed

2005 on that account? A. Because they could not get nothing in. Whenever they had anything too heavy to haul it in they hauled it in, but they did not haul it in afterwards; and we had no road; and it was on account of no road, whether that road or any other road, because of no road we could not keep the post-office up.

(Exception No. 24.)

The Court: Motion denied. How long after the road was closed was the post-office closed?
2006 A. I couldn't say. I don't know for sure as to that at all. I know the post-office was closed because the road was closed, because we had the trouble and that was all. It gave us so much trouble that we could not get nothing in there. That was the only reason. We all took turns to go after the mail. The post-office was one established by the government in this district, and a post-mistress appointed by the general author-
2007 ity. Mrs. Mondell was the post-mistress. Since the road was closed, or since the fence has been placed upon on the Malibu Ranch at the county line, I have not driven down to the line at all on this Mondell road. I have not been on the road at all; we were ordered by the sheriff not to go on the ranch, and we didn't go there again.

The Court: The Mondell road was on the Rindge Ranch property? A. Well, a little east of it. Let us see: From the road up to the line —of course I am not an authority on their line.

2008 It would be probably a quarter of a mile, pretty close. I mean a quarter of a mile of this Mondell road was on the Rindge property. The road from my place to the county line, I should judge, could not be under six miles. It could not be under that. That is, the road as it ran. I don't mean the county line from my place, because that is a good deal nearer. All but not to exceed half a mile of that road was off the Rindge property. I do not go down on that road
2009 at all since the Rindge property was closed; there is no reason to go that way. I have crossed it. I didn't follow it. Mr. Hoffman lives right against that line, and I went down there on business, but I didn't go with a team; I walked. He does not live on this old Mondell road; he lives off of the Mondell road, this way. In order to get from his place to my place it is necessary to go on the Mondell road. Since
2010 the Rindge property was closed to traffic, I think I only went down there once, and that was to see his land to be a witness for him. I looked his land over. I went down there on business and in order to get there I used the Mondell road; I had to use a piece of it. There are other neighbors living between my place and the Hoffman place, in close proximity to the road; there is quite a number. I have visited them since the road was closed. To get down to visit their places, I went down the Mondell road, or went

2011 down the path that goes to the Mondell road. We have a road that joins the Mondell path and we can go over that, or go across a cross path. Mr. Fitzpatrick lives between me and them on the road, and Mr. Kolklassen, and to go to Mr. Parks', or over to the other settlement there to Mr. Decker's settlement, you have to go over the Mondell road, part of it, but we can branch off and go over across the head of the Sequit. That Mondell road has been open since the
2012 Rindge road was closed, open right along, down to the Malibu Ranch, the Rindge property; not to the Ventura county line.

The Court: I understand. He said a quarter of a mile of it was on the Rindge property.

By Mr. Burnell:

I have got about forty acres under cultivation; I raised peaches, plums, apples, pears, apricots, several kinds of plums—I can't name them;
2013 barley, oats, wheat, corn—more than one kind of corn—cabbage, rutabagas, tomatoes, lettuce, onions, beans. I raised the pink beans for market, but the Kentucky Wonder for consumption there. Before the Rindge people kept me from going out by way of the Malibu Ranch, I took my produce out down the old road, down the beach, through the Malibu Ranch. I took my produce to different places. I sold it wherever I could, as a rule. I sold some of it to Mr. Albert Cohn, the grocer, here in Los Angeles.

That is the nearest to here. I sold some in Sawtelle. Since the Rindge Ranch has been closed to me, we have taken very nearly all of our produce out, some of it to Los Angeles, but we had to make the turn around the horn there. I get it out just like I told you—through the brush and then put it on a wagon over on the highway and go down to Los Angeles with it. I get it through the brush on a horse's back. We took 160 pounds on a horse. It ruined the horses. That is the only method I have now of getting my crops out, that I know of. I raised this year something over 5 tons of pink beans. I got out 40 sacks. They averaged 97 pounds and some ounces to a sack. I got them out the same way. I didn't get them out; I had to get someone else to get them out, and they went out, stealing across the Guadalasca ranch at any time, day or night. If you go at any time you are stealing across. And that is how I took the beans out, the remainder are in the warehouse on my place, waiting to get out. There is 75 bushels of corn there, too. Besides this part of my ranch that is now in cultivation there is 40 acres more to clear up to cultivate that is good land, that can be cultivated. I am in the farming business; that is all we do. I didn't farm steady. I farmed on the side, and I worked eight years for Ed C. Gird in this county, but I farmed on the side all the while, but still I drew

2017 wages from him at the same time. I have been connected with the business of farming over 25 years. I have got exactly seven acres in fruit trees, bearing trees, all but about maybe 20; they are young. I have not gotten any of my fruit out to market this year; impossible to do that. That stuff won't carry. Before the Rindge people kept me from going through the ranch I did not get any fruit out. It would be almost an impossibility to take it over that road
2018 and bring it down here and sell it. It would be all bruised up. Another thing, I dried some of it that we didn't use. The trees are young and didn't bear as much as they do now. Now, the fruit virtually rotted on me. I couldn't help it. I gave away all I could. I have something like 800 quarts done up.

By the Court:

These 40 people that I say are up there now,
2019 some goes out to work for their living; their land won't support them, they ain't got enough cleaned, you see. But some are making their living off their land. There ain't any that comes up there for pleasure in these that I mentioned. Those are people that are living there and their children, and going to school there and make their living off of agriculture, and going out on the threshers, or something of that kind in the fall. I have two sons out on a thresher now.

By Mr. Burnell: I am a married man. My

2020 wife lives up there with me. There has been occasion for her to go out in the last year or so. I carried her out to the doctor about two months ago. Let's see; it is a little more than two months ago. She came back about the first of September. She was gone six weeks. Over the rock places we had to have her walk, and over the smooth places we rode her on a pony over to the Triunfo post-office, and then took a stage and came down to Sawtelle to the doctor.

2021 Q. What was her physical condition at the time she went out, as to being sick or well?

Mr. Newby: We object to that as irrelevant and immaterial.

The Court: Overruled.

(Exception No. 25.)

A. A varicose vein bursted in her leg.

(Continuing). I was taking her out to have it burned to stop the bleeding and have it healed

2022 up—for medical treatment. I could have taken her out the same way we did before, but there wasn't any purpose in that. If we went that way, we had no place to go; if we came this way, we had a place to go. I took her to her own home in Sawtelle. She has a place there and keeps it. It is something like 25 miles to Oxnard from my house. From my place to Santa Monica by way of the Mondell road and through the Malibu Ranch, we figured it 32 miles. That is what we figured it. Of course, we didn't meas-

2023 ure it. I have never been to Hueneme. I have been near, within 5 or 6 miles or so. Before the Rindge Ranch was closed, when I could get through by way of the Mondell road and the Malibu Ranch, we bought our provisions and supplies, and always, for 25 or 30 years have been buying of Albert Cohn here, but we have stopped now and buy them over to Murphy & Wells, in Oxnard. Since the road has been closed, my business has gone to Ventura county.
2024 We took it over there; before we always came here. To go from my place to Santa Monica before I was cut out of the Rindge ranch, it seldom took us less than a day. From my place to Oxnard at the present time, going through the Guadalasca ranch, leading a horse. I have one horse that it takes about three men and a boy to make that horse go at all, and it takes two or three days to go from there, but if I go
2025 alone I can walk over to Oxnard and come home in a day myself. When I speak about taking a day to go to Santa Monica by way of the Rindge Ranch, I mean driving or walking. That meant one way. Coming back I was always two days. The first load I took in I was 14 days—exactly 14 days. I went then the same way we always went, right along the beach. At that time in places I guess there was a road—an inland road. You know we crossed in some places—on Point Dume we crossed over the land; we didn't

2026 follow the water there, because you cannot. The time it took me 14 days to make the trip I surely went along the beach. We had one 2-horse pony team and one single team and one 4-horse team, pulling three vehicles.

By the Court:

I could not follow the water around Point Dume as the water runs up on the point, and it is 20 or 30 feet deep at times, and splashes up on the point. There is no way to go. There
2027 is no beach there; it is solid rock. In my opinion it would surely be impossible to go down the beach, from any of these canyons up near the Ventura county line, to Santa Monica. It was a matter of physical impossibility for me to get by the cliff there at Point Dume; I couldn't get by.

The Court: Do you think any human being could get by? A. It would depend upon the
2028 man. Not me—I couldn't do it. If a man was herding a drove of cows down there, he could not get by Point Dume there, on the water side I don't think, unless the water went away out. I never seen it so.

Mr. Anderson: I don't think there is a question but that Point Dume is impassable on foot, horseback or otherwise, except in a boat.

Mr. Burnell: Yes; I don't think there is any question about that.

(Continuing). I have cattle on my ranch; I

2029 have seven head. There are cattle on the adjoining ranches. I couldn't state how many, because sometimes there is as high as 500, then there is 300 and so on. Sometimes 50 or 60 come in a bunch, sometimes 5 or 10. Hobson Brothers, my neighbors, have the largest number of cattle. I suppose they have thousands; I don't know how many they have got; they have got several hundred anyway. This land does not adjoin mine, but the cattle comes over
2030 just the same. There is nothing to prevent his cattle from coming up to my line, not in places; in places there is. I have a fence along the line of my ranch. That fence keeps Hobson's cattle from coming onto my land where it is up, but they go around the end of it and come in. They have not come through this season. It is two wires on buckhorn and lilacs.

Q. I will ask you, Mr. Richter, from your experience in ranching, what sort of a fence is
2031 suitable to keep cattle turned away from the crops on cultivated land

Mr. Anderson: We object to that on the ground that it has not been shown that the witness is qualified to testify to conditions similar to those existing on the Malibu Ranch.

The Court: I think I will let him answer that. Overruled.

(Exception No. 26.)

2032 A. All but outlaws I guess you could turn with a four-wire fence, but outlaws can't be turned. I don't think you could turn them short of a gun.

By the Court:

I mean by outlaws cattle that are wild and untamed. I found those on a range; they have to kill those to make them mind. That is all there is to that.

2033 By Mr. Burnell: Of these outlaw cattle I have seen three to my knowledge. The total number of all cattle that I have seen up there would be pretty hard to say; I think they had 1500 at one time in the big canyon, Sycamore Canyon, so they said. Those three outlaws were up in that country. Since I have been up there I have seen over a thousand and only three outlaws to my knowledge.

2034 Q. Are you familiar with the sort of land that lies on the Rindge Ranch? A. Along what I have passed over, I never followed around any, I didn't have time.

Cross-Examination

By Mr. Anderson:

I did not say I had been on the ranch but I had not been over the ranch since the sheriff told me that I could not go over that ranch. I said that he told us to cut out the rough stuff and not go on the ranch. I have not been there since. It wasn't about that time that the Rindge

2035 Company brought a lawsuit against me and Mr. Fitzpatrick and others; it was long after; told us to cut out the rough stuff and not go on the ranch. I remember when he told it, I will tell you that so that you can know and won't be mistaken. It was when I went to visit Mrs. Decker, it was about the time they surveyed the road down the canyon. I don't recall the date. Quite a while before that I had been over the ranch; I couldn't say how long. I remember
2036 that I was the defendant in the case of the Rindge Company against myself, Fitzpatrick and others. I was one of a party that went through the ranch by force, but the man said that I drove a team through. I did not. I walked. I was with the party—the party at that time undertook to shoot the locks off the gates with rifles. Well, let's see. I believe one shot was fired; I wouldn't swear to that. They broke
2037 through a number of gates, tore them off the hinges, in some instances, and broke the locks. They were locked with chains and padlocks, one of them were; a number of them were not; they were open. I went down through the roads recently constructed by the Rindge people, through their fences, but they gave me permission to go through that road. Irrespective of the order that I had giving me permission, I found the gates locked. Some of the party broke the locks and forced their way through. That occurred

2038 twice; and the result was an action that was brought against Fitzpatrick, myself and others and I was served with a complaint and summons in that action.

Q. And a judgment was entered restraining you from doing those acts and preventing you from crossing the ranch? A. No, sir, I didn't cross it.

Afternoon Session, 2 o'clock P. M.

2039 (Stipulated jury present.)

Mr. Burnell: Now, if Your Honor please, and by the courtesy of Mr. Anderson, we want to put on a witness who lives quite a distance out of town and who is an elderly man.

Mr. Anderson: Certainly.

A. J. RUSSELL,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

2040 By Mr. Burnell:

I live on the Conejo ranch in Ventura county. I don't think that ranch is known by any other name. There is different post-offices there, Triunfo post-office is the post-office I use.

Q. Now, I call your attention to a large map that is known as Defendant's Exhibit No. 6, and which is a reproduction, a photographic reproduction on a large scale, of one of the United States Geological Survey Maps, the property

2041 known as the Malibu Ranch is indicated on this map as lying within the broad purple mark, that is to say the broad purple mark indicating the boundaries of the Malibu Ranch, on all sides, excepting the ocean. The other purple markings on the map indicate property that is owned by Mrs. Rindge or by the Rindge Company, and which is outside of the Malibu proper. The yellow lines were put on by a witness for the
2042 defendants, who testified that they represent roads. The Russell Valley is as shown on the map, where the words "Russell Valley" or Triunfo post-office is area which I am now pointing to, and the broad black line is the line across the map here, that is the state highway, leading up to Ventura, indicated in the words in red "State Highway." The heavy green line which bears the legend, Ventura County Boundary or Ventura County, Los Angeles county boundary,
2043 represents the westerly line between the two counties, between the county of Los Angeles and county of Ventura, the exact boundary being indicated by the heavy dash line, the black dash line. Now, with that explanation, Mr. Russell, I will ask you to state where the ranch is that you speak of, as located on this map. A. Why, where it speaks of Russell Valley. That ranch is sometimes known as the Russell ranch; different people call it the Russell ranch. I am the Russell for whom the ranch was named. My

2044 children and myself own it now; formerly I owned the whole ranch. I at present reside on the ranch.

Q. Now I call your attention to what are indicated on the map, Defendant's Exhibit 6, as roads, running through Russell ranch, one which you will notice leads from Triunfo post-office on the Ventura county highway, in a generally southerly and southeasterly direction—

2045 A. Yes, sir.

Q. —to a place called Cornell, as shown on the map, with various roads leading from it. The other road runs to the east of the road which I have just mentioned, adjoining a third road which leads from the point on the Ventura state highway, commencing on the state highway just above where the letter "Y" is in the word "Valley" on the map, and running in a generally westerly direction. Are the roads or

2046 portions of roads which I indicated, they run through the Russell ranch? A. Yes, sir.

Q. The third road is the one leading from the west of the one from Triunfo post-office, and the south, and the one that comes into the road leading west, in between Mathieson Lake, indicated by the green spot on the map, and Russell Valley? A. There is one or two roads; the one that goes close to Cornell, and the one that goes up here (indicating on map). The one that comes from Mathieson ranch is the one that

2047 goes to Cornell, and the other one is the one from Triunfo; they both start from Triunfo, from the post-office. There used to be another road there. There is no traveled road running from the Ventura state highway, beginning about where the "Y" is in the word "Valley," running in a westerly direction, and joining the intersecting road between Triunfo and Cornell. There is a gate there. The two roads are the
2048 road from Triunfo to Cornell and the road from Triunfo to the Mathieson ranch to the lake. That would be going south of Triunfo to the junction of the road leading westerly and then on to this point, and also the road leading southerly going across the Ventura county line; they are called private roads; they are all through the Russell ranch, except the state highway. The roads shown in yellow, to which you have called my attention, are private roads. We have
2049 gates across them at different places. We permit people to go through there. The products raised on the Russell ranch are alfalfa, grain and some beans; and cattle. I think about seven or eight hundred on that ranch; somewhere along there; a thousand sometimes. I know some of the people whom it has been testified lives up in what is referred to here as the Decker plateau. I know Ernest Decker. I know Charlie Decker and Mrs. Decker, and Mr. Vaughn. I don't know Mr. Parks. I am not very well ac-

2050 quainted. The people whom I know that live in that part of the country known as the Decker plateau pass through our ranch frequently. I have seven or eight hundred cattle on the ranch. We fenced the portion of the ranch on which the cattle grazed from the portion that is cultivated. We have under cultivation I suppose 1500 acres. I have been in the cattle and ranching business since 1877. I have been interested in Russell ranch since 1881. The kind of fenc-
2051 ing I use on our ranch the Russell ranch, between the cultivated land and the land where the cattle graze is the 26—what they call the hog wire, and from two to three barbed wires on top. I use the 26 inches high of the hog wire and from two to three barbed wires, strands. We use mostly oak posts; some pickets. The pickets are this mountain redwood that comes from those hills. Where we use posts we use
2052 mostly oak. I couldn't tell exactly how high the fence is. Five feet makes a good cattle fence.

Q. You get the wood for your posts and pickets in the mountain country there, do you?

Mr. Anderson: I object to that as immaterial, if the court please.

The Court: Overruled.

(Exception No. 27.)

A. We get the oak posts on our place.

(Continuing). The posts that I call redwood

2053 come from those mountains, different ones. That redwood is not the same as the redwood that comes from the California redwood trees. Some people call it mountain mahogany. It is very red. It is small; it don't grow large. It is in the rough. The posts are split. I have used posts of California redwood—that is, the wood of the tree known as the redwood tree. I have built quite a lot of fence made out of the redwood from the big trees. I do not use this
2054 hog wire for cattle. We do where the hogs are. Where we have cattle and not hogs, four wires makes a good cattle fence. I used that, three and four wires. A fence that is composed of either three strands of wire or four strands of wire, and the same kind of posts I have been describing, that kind of fence turns our cattle and keeps them out of the cultivated land. I have not been over the Malibu Ranch, the Rindge Ranch
2055 very much. I have been across it once or twice. I did not have any sheep on the Russell ranch. We have had sheep there; always had a herder with the sheep, so we did not necessarily use a fence. I am familiar with the raising of sheep. I am acquainted with the general custom of raising sheep, among the sheep men in California generally.

Q. I will ask you if it is customary in the raising of sheep to keep a herder with them at all times. A. It is.

2056 Mr. Anderson: I move to strike out the answer until I can object. I object to that on the ground that it is incompetent, irrelevant and immaterial whether there may or not not have been a custom as to the method of keeping herders. No one is compelled to keep herders.

The Court: Objection overruled.

(Exception No. 28.)

Cross-Examination

2057 By Mr. Newby:

Even where a ranch may have sheep, and employ a herder, fences are not also necessary for sheep where you have a herder. If you had a hog ranch it is not customary to have a keeper with them; it is more to protect the sheep from wild animals; you have to have a herder with the sheep. I never saw anybody that did not. If they did not have quite a herd, I suppose they would not need a herder. I don't know. If any-
2058 body had a few sheep it would not pay to have a herder. We generally have 1500 to 2000 or 2500. A thousand sheep would have to have a herder with them. I hardly think it would be economical to have a herder for less than a thousand; if a man had 500 he would have to protect them from wild animals, and then it would be necessary to have a herder. The road known as the Cornell road was there when I bought the ranch. It has been used as a road since '81, at times, when the canyon was not

2059 washed out. There was times when they could not go through it. But there has been no interruption except from cloud bursts and physical causes of that kind that I know of. When it gets to Cornell they can go up a hill there, a very steep hill there into the mountains. That is the Nigger Hill road. I have been over that road to the south of Cornell. I went over it with a party one time in a spring wagon, 25 years ago.
2060 I think I had six horses pulling it over. I have traveled over the road from Triunfo after it intersects the Ventura county line, going to the west towards Ventura. On that road I have traveled to go to Ventura that way, to all of the Ventura towns, Oxnard and Hueneme. That is a pretty fair road, I guess. That has been traveled as a highway more or less ever since I have been there, that is, since '81. These gates that I speak of, are between Triunfo (Mr. New-
2061 by indicates on map) and the intersection of the Ventura county line; I believe there is gates on the other line too, that goes to Ventura; the one to the west. Not all of those gates are on the Russell ranch. They are on the Mathieson ranch, and other people that own land up there. I don't think those gates are locked, and any person desiring to pass over that road, I think, may do so by opening the gates and going through them. That has been the case ever since I have been there. I have known some of the

gates to be locked. I have known people to lock the gates at different times; three or four years ago the gates were locked; I think Mathieson ordered them locked, and then I think they were afterwards opened. I think it maybe was for about 2 years, and that was about 3 years ago. I think they are open now. I keep up the road on my ranch and I suppose Mathieson does on his. The county authorities do not spend any money on either one of the roads. I believe at the west end the county does. I believe it is a county road to the top of the hill coming Hueneme way or Ventura way, or down to the foot of the hill; I don't know which. Where I indicate as the foot of the hill is right through the Mathieson ranch going west. You see "Potrero." You go through that and come to a hill that tips down into the valley; just to the west of the word "Potrero," about two miles west.

By the Court:

Through my property I keep the road up.

By Mr. Newby:

Since I have been living in that country there has been no distinction with reference to persons desiring to travel over these two roads that I have described; not that I know of. The general public has been permitted to go over those two roads. I have not been up that Decker road

since the county done any work on it; I was up that road I guess six or seven years ago.

JACOB H. RICHTER,

recalled.

Cross-Eamination (Resumed)

By Mr. Anderson:

At the time that these gates were broken through, when I went in that party, I had permission to go through that gate that was broke. They told me not to go through the hog road any more but to go over the bridge. That was a long party; some were a mile ahead of the others. When I got there, the gate was open. There was a gate standing beside the road, but there was nobody touched it that I saw. I seen them open, and I saw them open the gates, but whether they tore the gates or not, I don't know. I was not in front, I was behind. The only gate that I claim I had permission to go through was the Lachusa gate.

Q. Isn't it a fact that prior to that time the road that you had been using, along the beach, had been pretty well washed out and had become practically impassable, and that the Rindge people had built new roads above them, on the hard dirt and fenced them and put gates on them and locked the gates? A. Well, in places, they built over the same place where the road was before and in places they made a new road. There was places we could not get through,

2068 along the ocean, and we went over the new road. All the gates excepting the Lachusa gate were down toward town, were on the new roads, recently constructed by the Rindge people or worked over. With reference to the gates, where the gates were erected and locked, those were new roads that had been recently constructed by the Rindge Company or reworked roads. I went to this particular section where
2069 I am now living and settled there in April, 1910. I believe I went up in the Yerba Buena section in 1892; just went up there; I did not live there. I don't believe I went there at all between 1902 and 1910; I went up as far as the Malibu gate is all. That was in 1892. I had been up as far as Malibu gate but not beyond that; along the beach like other people do. When I went there in 1910 the other settlers in there at that time were Mr. Emery LaSac; Henry Mondell; Jesus
2070 Serrano; I don't believe I can remember any more; I believe all the others came in since. The Mondell road I have not used since the injunction, with the wagon. I have walked across. I have not walked down on the ranch since Mr. Zehner told me not to; since this injunction when I and Mr. Fitzpatrick were a party to that injunction, I never drove on the ranch or set foot on it so far as I know. I did not use the road since. I can locate the point on the map where the road comes onto the ranch or near it.

2071 Q. I will call your attention to the fact that this purple line, and the straight black line to the west of the purple line, is the ranch boundary, that is the ranch boundary and that is the Ventura county line (indicating)? A. This straight patch here?

Q. Yes. This piece of purple is the rest of the ranch property that goes up into Yerba Buena. Now the point which I am indicating
2072 below the "L" in Little Sycamore, the purple point is where the ranch property ends. Now, with that in mind can you tell where the Mondell road comes and Little Sycamore, being what is called Yerba Buena Canyon? A. That is at a point right along here, it passes that corner, within a hundred feet of that corner.

Q. Then, as I understand it, it commences at a point just where the purple comes in contact with the beach? A. There is another road
2073 that comes in that way (indicating).

Q. What other road was that? A. That was what was considered the county road.

Q. The county road did not go across the Ventura county line, did it? A. No sir, that way (indicating). There was a road there across the Ventura county line on the Rindge property which I considered a county road; the Mondell road connected with that. The Mondell road, where it reaches the county road, from the Ventura county line, was, I should think a

2074 mile and a half. The road which I thought was the county road was back from the beach where it crosses the county line into Los Angeles county; I should think less than a quarter of a mile. That present road was lined out before we went over it. I ain't sure, but I believe it was. I seen stakes there, but I didn't pay any attention to that. I think there was more than one road on the purple strip at the time I am talking about. It was not a graded road but it was a
2075 traveled strip. It was the end of the road which ran through the ranch which I considered the county road, outside of the ranch. There was a sign, "This is the county road to Ventura." And I took their word when I went there. I did not say I had been selling my produce to Mr. Cohn for about 25 years; I said I bought my groceries from him; that was long before I went into this section. I simply continued to
2076 trade with him until lately. I don't want it understood that I have been out in the Yerba Buena country for 25 years; only eight years. I went up there before I took it up and three days after I took it up I went out there and began operations. I sold to M Cohn from Sawtelle before that. I do not know what the elevation is where I live, for sure. I have no way to tell you exactly. It is only a case of guesswork but it is about 1200 feet. That is just a guess.

2077 *Redirect-Examination*

By Mr. Burnell:

The conversation at which the sheriff used the expression "Cut out the rough stuff" was held at Mrs. Decker's. I don't know how many people were present. I didn't count them. I don't know. There was quite a number. It seems to me there was a good many more. The sheriff's name was Zehner, the under sheriff of Los Angeles county. It had no connection with
2078 the breaking of the gate.

Mr. Anderson: In connection with the cross-examination of this witness, if the court please, it is stipulated that the decree of injunction in the case of Rindge Company, a corporation, against Fitzpatrick, Jacob H. Richter, et al, No. B-32480, was signed on the first of February, 1916, and that is the decree of injunction to which Mr. Richter has referred.

2079 Mr. Burnell: Yes; I stipulate to the facts but I don't stipulate it is material.

Mr. Anderson: It is to fix the date when he ceased to use the road.

JOHN FITZPATRICK,

called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I live in Ventura county, in Little Sycamore Canyon, near Yerba Buena. My business is

2080 farming. I have been in that business 37 years. I have been living in Yerba Buena settlement about 7 years. I own property there, 280 acres.

Q. Now, I will ask you, look at this map which is known as defendant's exhibit No. 6, which is a photographic enlargement of the United States Geological Survey map. You have been in the court room the last two or three days and are somewhat familiar with the
2081 map? A. Yes sir.

Q. Indicate on this map—the Malibu Ranch is shown within the purple line, the eastern terminus being the Las Flores Canyon and the western terminus being the Ventura county line, and the north the broad purple line. A. Yes sir.

Q. And the Ventura county line is indicated by the heavy green line and yellow property line, being the heavy black dash line here, lying
2082 to the east of the green portion indicated by the black line and the ocean; the other Rindge property being indicated by the various purple marks upon the map. The Yerba Buena settlement has been testified to as being indicated by the red circle on that part of the map which reads "Ventura county line" into which Little Sycamore Canyon and Deer Canyon lead, which are shown on the map. Point out as near as you can where your property lies; just step down here and use the pointer. A. The corner of

2083 my holdings is 80 rods from the county line, up this corner, in section 14. My house is in the southwest corner of section 11 on the west of Little Sycamore Canyon.

Mr. Burnell: Now, Mr. Scotten, if you will please make a mark on there with the green pencil.

Mr. Scotten: I will mark that X-15 (in red).

Mr. Burnell: Now, while you are still on
2084 your feet, Mr. Fitzpatrick, I want to call your attention to one other feature of the map, Defendant's Exhibit 6, and that is the red line extending from the eastern line of the Malibu Ranch at Las Flores canyon or thereabouts, through the ranch to its western boundary at the Ventura county line. You notice where that line is at the western boundary? A. Yes.

Q. Now, I will ask you if there is, or has been, any road or means by which to reach the
2085 point where the proposed highway crosses the Ventura county line from your property? A. There is a road running from my house to the Ventura and Los Angeles county line, but the exact location of this new surveyor's road—that is, the distance from the ocean back, the exact location, I wouldn't know only by the survey stakes, where the survey stakes were set when the surveyors were there, and the road hits it just about square.

2086 By Mr. Newby:

This is the road I have described, known as the Mondell road. I heard the testimony of Mr. Jacob Richter. That is the same road that Mr. Richter described. I have known this road which has been referred to as the Mondell road since the last Monday in May in 1911. I have traveled over it. At no time up until about three months ago has it been closed by gates or fences or other obstructions. Since that time I
2087 have never been over the road. I know that during the time I have spoken of, from 1911 until a short time ago, the road was also traveled by other persons by the public generally as far as I know. There never was any objection made to me traveling over it. Of my property there is in cultivation about eight acres. I raise a family garden consisting of all kinds of garden stuff. I have 100 mixed fruit trees five years
2088 old, and I have 60 walnut trees five years old, all of which produce walnuts and fruit. I have 150 grape vines and I cultivate a little barley and corn on this ground and a few beans, anything I can consume on the place. The balance of my land I graze and other people graze it. I have cattle; I have 11 head at the present time, I believe it is. Cattle belonging to other people come on my ground and my cattle go on other people's ground. It is not fenced. I couldn't say just how many. Sometimes there may be

2089 quite a bunch, and then for weeks there isn't any on it.

Q. By what road, path, trail or other means do you get into and out of your property from any point, such as Hueneme, Oxnard, Santa Monica or any other town? A. Well, from the state highway or Triunfo I come over the so-called Triunfo trail.

Q. Step down and take the pointer and point out on the map the road that you take going
2090 from Triunfo to your property—state highway to your property?

(The Witness): That is Triunfo where my pointer is now resting, indicated by the circle and the words "Triunfo." Leaving the state highway I come into Russell Ranch house about there, indicating the road marked in yellow and leading in a southerly direction from the state highway at Triunfo post-office to the Ventura
2091 line, at which point it intersects the road that is shown in yellow on the map (Exhibit 6) as running approximately easterly and westerly, the easterly end being on the state highway, at the point B. M., and the road extending across the map to the west. Then we follow a road and open a few gates to a small canyon where there is a little lake situated. I should judge this would be it, indicating a turning off the road running east and west marked yellow on the map to a road running almost due south and

2092 passing what has been indentified as the Little Mathieson Lake and then proceeding across the boundary between the county of Ventura and the county of Los Angeles. That brings you down to this point on the bottom. We following along here to where the road branches off and turns in a westerly direction, indicating a road or path that is shown on the map crossing the Ventura county line in a general southwest-
2093 erly direction. We come across the Ventura county line just below the lake, or in that neighborhood. Then turn westerly towards the ocean and hit about the Mathieson line. There is a fence through there that is supposed to be the Mathieson line. We hit along about there or a little past. That is where we go with the wagon—a hundred or two hundred yards past it. Then we take the horse trail. That is indicated by the red dots upon the line, being the
2094 trail that passes through the "Tr." of the word "Triunfo" in "Triunfo Pass" and extending thence into the Yerba Buena settlement.

The Court: Mr. Fitzpatrick, is that a well defined road or merely a trail running along the line there?

A. There is places in it, it goes along the bed of the creek, it is impossible to get there in the wet season. I have known it to be that way for two weeks at a time. Other places it has been worked out so that it is a

2095 fairly good road. There is a gate at this supposed Mathieson fence line which we open and pass through and several gates from there on out. Sometimes in the year there is more than others. From the end of this road the trail is good for about a mile and then you get onto the top of this place here, 2727 feet high, and there is a steep grade, it is almost impossible for a man to ride a horse and I have packed
2096 over this grade when I would unload part of the pack at the bottom and went up and then went back and got the rest, and I wouldn't ride a horse down it under any consideration. From the top of this path it is a fairly good horse-trail on down to about Mr. Mondell's place, say a half a mile or close on to half a mile above my cabin, then we head into a good train into my cabin. In fact a wagon can go over it.

(Continuing.) It is impossible to drive a
2097 wagon and team of horses from Triunfo post-office to my ranch by the route I have indicated. That is not the way I have always taken to go in and out of my place. I very seldom take that route. The other route is leading from my place on the dotted line, there is a trail that goes over the Guadalasca grant. That is the trail pretty well shown on the map by the red dots, from the center of the circle which indicates Yerba Buena settlement, in a generally southwesterly and westerly direction until it

joins the road shown in yellow, but it is a little high. That is the general direction. Leaving my cabin here and taking this trail up there is quite a steep hill for the first half a mile but it can be gotten over fairly well. There has been a few wagons went over it and several sleds. You can drive a team over it for about a half a mile and then you drop into Serrano Canyon, a very steep grade, into this canyon, and then you follow down this canyon and you hit this sycamore canyon about here, instead of up there (indicating on map, Exhibit 6) and I judge you come out about straight across in here (indicating).

Q. I will put a mark there where the witness indicates hitting Sycamore Canyon and I will mark it letter "A."

Mr. Anderson: Let me suggest that you first mark—that the first road which you pointed out; mark it "1st," and the second one mark it "2nd," so that we can have some means of identifying them in the record.

Mr. Burnell: I have marked the road that he indicated as the connecting road between the trail leading from Yerba Buena to Ventura county line, and the road marked in yellow across the line first. Now can you indicate how that trail goes through there, using a pencil? A. Well, I don't see any mountain road off here in the hills, but I suspect that is what resembles it, in the first place it is Serrano

2101 Canyon—I judge it is about two miles up there and then back here to Boney Mountain. It would come along through there (indicating). That is just approximate; that brings it down to Sycamore Canyon. Then I travel up Sycamore Canyon; it is a fairly wide level canyon, that a wagon can go over. This is supposed to be the old Conejo road. Up this canyon, up in this neighborhood (indicating); when I get up to the point where the heavy dotted line is
2102 on the map, which was put on the map by Mr. Scotton, I follow those up to about here (indicating), then struck straight up across the hill and hit the top of the old Conejo grade. I don't know how far back it would be but somewhere in there. That way of getting in and out in regard to steepness and whether or not we can use a horse and wagon, we have driven in here, across a barley field, just in across the
2103 barley field until you come to the steep hill and by tying all four wheels on the wagon you can go down the hill into this canyon. This hill is about 400 feet long. We go up, doing the other way: if you have any load, you unload it and drive up empty. We pack the load up by horseback around the side of the hill. There is a trail that leads around the side of the hill. That is not quite so steep there. We are able to take one horse only, at a time, it is nothing but a horse trail to within about one hundred yards

of Sycamore Canyon. There, there has been a few wagons standing under the trees, taking turn about using some of them, some of them hitch on and some of them don't; then we drive on out empty and over this barley field out to the state highway. It is impossible to bring a load in here, or take a load out, by the way I have just indicated, from the Yerba Buena settlement, by loading my wagon at my place or any other place in the Yerba Buena country, and taking the wagon load up to the Ventura highway, by the road or trail just indicated. Up until last July a year ago I went the coast road entirely; that is through the Rindge property. Since that time I have not done so; the gate was locked up and the road was blowed up in places so it was impossible. The only spot I saw the road blown up with my own eyes—I don't know whether there is any name to the canyon or not, but I should judge it was about in the neighborhood of a mile above the Ventura county line. There was a hole blowed in the road, but it could be gotten around. That is the only one I saw blowed up. The Ventura county side they blowed the first hole in the road, but it could be gotten by. That, I should judge, was about August, 1917, or in that neighborhood. It might have been as late as the first of September. In the neighborhood of August. This hole blown in the road, I should judge was

2107 in the neighborhood of a mile from the Ventura county line; it might not have been that far; it might have been three-quarters, but about that far. It was on a portion of what we call the Mondell road that we drove over. It was on the Marion Harris homestead I believe it is, now supposed to be owned by the Rindge Company. I am acquainted with the people who live in the Yerba Buena settlement. There resides
2108 there at the present time in the neighborhood of forty. I don't know as I could state definitely how many resided there prior to the time that the Rindge Ranch was closed to travel. We had a picnic one time in the neighborhood, and there was 76 at the picnic, and every one of them resided in Yerba Buena. That was in the neighborhood of three years ago. There is a school house in the Yerba Buena district. There is 12 children in actual attendance now. Last
2109 year there was 15, and one time there was 21. I believe it was the year before last that the 21 was. I am familiar with the roads that are shown in yellow upon the map leading from Triunfo post-office through the Russell Ranch to the Mathieson Ranch by Little Mathieson Lake, and on up to the homes of Charley Decker and Marion Decker. I am familiar with the part of that road that is known as Malloy Hill. I have traveled over that road. Leaving Triunfo post-office and coming into the Russell ranch

house, that is a fairly good road, considered a good road. Then running westerly I guess it would be, or northwesterly, there is a good road until you turn in about the Little Lake. I suppose that is the Little Lake (indicating). At Little Lake we drive through the end of the Little Lake, the road goes, and at times it is impassable for probably two weeks or three weeks in the rainy season, impossible to get through it or by it in the heavy rains. Then there is a fairly good road until they hit what is known as the bottom of the Malloy grade. I don't know just how long this grade is. It took in the neighborhood of 50 minutes to drive up it with a four horse team. I have hauled several loads over it. I hauled on an average of about 1200 pounds with four good mules, on a light farm wagon, just the running gears of a light farm wagon. I stopped a good many times, to let the teams rest. From there on, after you get on top of the Malloy grade there is a new strip of road built there. That is, I imagine it is new from the condition of the ground, which is fairly level, with the exception that it is so narrow. There was lots of places that you had to hold the leaders in entirely in order to make the turns. After leaving this fairly level stretch of road, then the road pulled up and down over these different little gulches or canyons so that there were several very steep

2113 grades, both going and coming out on this road from—well, a little past Vaughan's place, or in other words, the end of this new graded road—from there to the Charley Decker house, very steep pitches both ways going in and out. I went over this road to Charley Decker's house, perhaps 8 or 9 times both ways, and from the junction of the road here to the Ernest Decker place I have never been over all of it. I cut across afoot and hit the road and went down
2114 here to the house and came back the same way from Charley Decker's place. It would be impossible to haul a load of 1200 pounds by the Malloy grade with two horses and do justice to the horses. As to the condition of the road from Vaughan's place to the Charley Decker place, it seemed to me that the road was just simply laid out the easiest place to build it by settlers or somebody else, just judging by the
2115 description of the road as I went over it. It crossed several steep ravines. There were short pulls and very steep. I don't know but that there is one or two of them steeper than the Malloy grade, because they are short and it don't wear the team out so much; but they are very steep, and lots of places the curves of the road are so short that it is almost impossible to drive four horses and make these curves. It is not impossible, but almost impossible. I used to go over the Rindge Ranch before the gate

2116 was closed. I observed railroad tracks on the Rindge property. I saw cars or other vehicles going over the tracks. One time I saw a flat car with some kind of a gasoline engine—I couldn't describe it—passing over it. I rather believe I last saw any cars on the railroad in the fall of 1913. I endeavored to ride on this railroad; I and a friend was coming down the coast, and my friend was driving the team and
2117 I was walking, and there was two Spanish fellows came along with flat cars and two mules hitched to them, and I asked one of them if I could ride down and they said no, that the Rindge Company didn't allow anybody to ride on the cars. I traveled over the Rindge road from the last Sunday in May, in 1911, until the latter part of July, 1917.

Cross-Examination

By Mr. Newby:

2118 I was present at a meeting at the Lachusa gate on one occasion, when some shots were fired. I fired that shot. I didn't shoot at nobody. I shot at the lock on the gate. I don't know whether I hit it or not; we opened it any way. I did not threaten a number of employes on the Rindge Ranch with shooting, at no time. I did not send word to the superintendent, Mr. Patton, that I intended to shoot him. I never have made any such statement. With this party who shot the lock off of the Lachusa gate, I, in

company with several others, passed down the road and broke open several gates. We didn't use no force any more than to just break open the lock and go through. We done it several different ways. I was armed at that time. Some of the posts were cut off with an axe; some we took off of the hindges; others we broke the lock with a pick; some we broke with a coal chisel; either cut the wire or the chain on the lock, I wouldn't state just which. There were some wire gates there that we cut. I don't know as I could just state exactly how many people were in that party; in the neighborhood of a dozen, though. I couldn't say that we were all armed, but a good many of us were. We were going after provisions. We saw employes of the Rindge Company there that day. We did not threaten them in any way. The first man I met at the Lachusa Canyon was a man we commonly called "Shorty." I understand his name is Maxwell. I met him at the gate and I got off my wagon and I walked down and I told him that we were all settlers from Yerba Buena and we were out after provisions and had to have something to eat to sustain life in ourselves and our families and I asked him if he had a key and he said "Yes." I said, "Will you kindly unlock the gates and let us go to market and get some provisions." He said, "No sir, I will not under any consideration. You

2122 cannot go through the gate." I says, "Well, I am sorry to say, but if you ain't in a big hurry you just stick around and we will see if we cannot get through." I told the party to come on and we opened the gate and went through. We exhibited our weapons. He was armed. I couldn't say what he had; he had a six shooter of some kind on a belt. He was not exactly alone, there was other hands right close to him within forty or fifty feet. When that took place,
2123 I don't know as I could tell you the exact date. I believe it was October or November, 1913. I did not know at that time that I could have gone to Triunfo and gotton provisions. I hadn't been going that way; never had been that way. I didn't know that there was a trail through the Triunfo Pass. I had heard that the settlers had been in that direction but I had never heard that there was a trail there, and didn't know
2124 that you could get provisions. I made no inquiries. Those gates that we broke down after we passed through the Lachusa gates, I rather believe the first one was located at the Escondido road, I don't know really—we called it Dry Canyon. I don't know whether that is the right name or not. I think that is the first one. It is right in that neighborhood (indicating on map, Exhibit 6). This is just west of the place marked "Solstice Canyon." That gate was over a new road where the railroad was covered up

2125 and turned into a road. I knew as a fact that all of the places at which the gates were constructed excepting at Lechusa Canyon were over newly constructed road.

Q. Why didn't you use the old road that you had been traversing? A. Well, I will tell you very quickly. In driving down here we drove over a piece of mesa going out onto the sand as we had done and they erected a new wire fence along the ground in the sand so that we
2126 could not drive in the sand and they had a deputy sheriff at the gate and I asked him to open the gate and let us go out on the sand where we had been driving and he would not do it. I says, "It is just as much harm to break the wire down as the gate, so I guess we might as well break the gate." It was high tide and there was a rocky point where it had been impossible to get by without waiting five or six
2127 hours for the tide to go down. In other words, I preferred to drive over a good road. I say that the deputy sheriff was standing at the gate. I knew that the other portions of the road across which this gate was constructed had been newly built by the Rindge people. After I got by the first gate I didn't go down on the old road because it was impossible to get down there, they erected these gates at such points that we—I don't know whether I can describe it or not, but it is a strip of road perhaps three

2128 miles and there was places that we could pull from the sand onto this road and use it and then pull down again, and at each one of those places they erected a gate and in order to get off the old strip onto the good road we had to break down another gate to get back onto the sand and then we drove down on a piece of old road that we had used for a while to get down to another gate. We broke one gate or two
2129 gates and we discussed the matter and thought it was just as well to break them all than it was to break one, principally so as to give ourselves an opportunity to use the new road. After this first experience I have just described, we did it again, one or two times, in order to get back home, we had to do it. I rather believe we stayed in Santa Monica over night. It might have been two nights and one day and then returned home. We didn't go back by the State
2130 Highway because we had no desire to leave our wagons ten or twelve miles from home. We left them at home, when we went back. On this trip we were using them, took them all the way to Santa Monica. We didn't drive to the State Highway through Triunfo because we could not get home; there was no road; there was no way to get our wagons across that way; it was impassable. When I started out with the wagon I didn't know it was impassable, I didn't know of any way at that time, when I started out; if

2131 I had known it was that way we probably would have gone that way. We went the other way in order to get something to eat. And then we went back to our families and took the provisions. I believe a portion of them made another trip, about the same conditions, broke about the same number of gates. I would not state definitely whether I was with them or not. I have a definite recollection as to how many
2132 trips I made and broke gates. I broke the Lechusa Canyon gate before this trip that we all went in, I was coming out to Santa Monica and I stopped there and talked to the deputy sheriff, 0-99, a deputy sheriff. He unlocked the gate and let me through, and I stopped and talked to him quite a while, general conversation. He said that he had orders to let all the settlers go back and forth to their homes, but he had orders to keep all transients out, hunters, and I
2133 said, "That suits me and I think it does all the settlers." So I went to Santa Monica and got my provisions, some groceries, and returning back to Lechusa Canyon, and the gate was unlocked, and open, and I had plenty of time to drive through. Mr. Wilson was standing at the barn door and he motioned his hand and I stopped and he came over and shook his head and he stepped up and locked the gate. He says, "I got new orders last night. I cannot allow anybody to go through this gate neither

way." I talked to him a while, and he further informed me if one of us was to die he could not open the gate and allow us to pass out. I asked him if he was a deputy sheriff, his name, and he said he was, and he showed me his badge. I said, "Mr. Wilson, you are either going to take me to Los Angeles or I am going home to my family." And I got down and broke the gate and went home. That was before the gang came down and broke the gate. I couldn't say the date; probably three or four weeks. In approaching this gate at Lechusa Canyon, I couldn't tell you as to what road I traveled, the Malibu Ranch, for this reason: When we had a good low tide we drove the beach in preference to going over the mesa at Escondido road—the Ramirez mesa, it is called, I believe. To tell you which road I took at that particular time it would be impossible because if it was low tide, I took the sand. I drove on this road where the gates were, if it was high tide, if not I did not; I do not recall. On that trip I did not break the gate at Lechusa; I took it off the hindges. I couldn't state whether the gates were up at that time or not. I have no definite recollection, not whether the gates were erected at that time; they were erected new that fall. Some time after that, I would not state just exactly the date, we were served with papers, enjoining us from traveling the portion of this Rindge road—

2137 that we could, and we could not appear in court and fight it, and we just let it go. I could not state definitely whether I made the trip through the Rindge Ranch before I was served with these papers or not. I made one trip afterwards. I couldn't state definitely the date, but I came in here and in going back, why I broke the gate at Lechusa Canyon—broke the lock. I did not know I had been enjoined not to do that, not on that gate; never was enjoined at no time
2138 about the Lechusa Canyon road. I did not break any other gate. That is not the last trip I made over the ranch; I made a good many of them, lots of them. Since the injunction was served on me, I could not tell how many I have made, but I suppose anywhere from 15 to 25. I have traveled the only road there is from the county line down to—well, Zuma Beach, passed over Zuma Beach on the sand and then took the
2139 mesa road over Point Dume there and out onto the sand and down along the sand to, about Corral Canyon, in that neighborhood. And then followed along the road across Malibu flat and on down. That is the same road that I had traveled before the new road was built where the gates were, with the exception of Lechusa Canyon. They put a gate there on the old road. I have mentioned being served with an injunction. That was a case in which the Rindge Company was plaintiff, and Fitzpatrick and

2140 Richter and a number of others were defendants.

Mr. Newby: It will be stipulated that that is the same suit in which the decree of injunction was served in February, 1916.

Mr. Burnell: Oh, yes.

Mr. Vallee: We don't stipulate as to the time of serving notice of injunction.

Mr. Newby: The first day of February, 1916.

2141 If Your Honor please I am about to take up another branch.

The Court: I think we will adjourn. I want to ask Mr. Fitzpatrick one question before we adjourn. How many settlers were in that company that came down on the occasion you have described? A. When we broke the gates?

The Court: Yes. A. Why, I guess I could name every man. In the neighborhood of 12.

The Court: How many men were there in

2142 the Yerba Buena settlement? A. Well, the gang that came out. Every man that was in there—there may have been some living in there that was out working or something, at that time, but every man that was actually at home when we started went.

The Court: There was a general movement of the party of settlers? A. Yes, sir, to get something to eat.

2143 Thursday, October 10, 1918, 10 o'clock a. m.
(Jury all present and in the box.)

JOHN FITZPATRICK,

recalled.

Cross-Examination (Resumed)

By Mr. Newby:

I stated yesterday that I had been served with a complaint in action of the Rindge Company against Fitzpatrick *et al.* I believe a copy of
2144 this map which is now shown me was attached to the complaint in that action, served on me. I believe that is the same map.

The map in question was offered and received in evidence, marked Defendants' Exhibit 12, and is included in the exhibits certified up to the Appellate Court by stipulation.

The Court: I want the ruling made clear, gentlemen, that in considering this map, while
2145 you may consider it in connection with the testimony of Mr. Fitzpatrick, and in connection with the cross-examination of the witness, Mr. Fitzpatrick, that you are not to conclude that the matters stated on this map are proved or are a fact, or proven fact in this case.

The Witness: Taking the pointer and tracing out on the map, Defendant's Exhibit 6, the road I used to use before the gates were locked on the Rindge Ranch, right here is where my cabin is located; that is marked 15-X in green.

Just abreast of that Little Sycamore Canyon. Then in a curved direction to about 100 yards of the Malibu corner, the northwest corner of the Rindge line; then we go back in a southwesterly direction, and down here, to the ocean, about 150 or 200 yards south of where the canyon goes into the ocean, probably 100 yards from the ocean, and gets into the beach road, or coast road as we call it, marked with a dotted line, and down to the Los Angeles-Ventura county line, along the Sequit Canyon, commonly known as Secos Canyon, and along over what we term the beach sand, on the black dotted line, down to about what we call Hangman's Canyon. That is Nicolas Canyon, and perhaps 100 yards from Nicolas Canyon we climb up on the mesa and go along perhaps a quarter of a mile, then we follow the dotted line down across the mesa in a zig-zag direction, until we hit about Windmill Canyon, or Haywarth Canyon, it is called sometimes, Trancas Canyon. There is a windmill placed about 300 yards from the ocean and I guess that is the reason that they call it Trancas Canyon. Just a little bit before we get to Trancas Canyon, we hit the sand again, and we call that Dume Canyon; that is sometimes known as Zuma. In the neighborhood of Zuma Canyon we go in the canyon, sometimes following the water course and sometimes not. We go inland perhaps—well, a hundred

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2149 rods, possibly a half mile, from the ocean. We go on this sand to Dume Canyon and go inland there 100 rods or possibly a half a mile, and then we take a zig-zag course about the way the dotted line goes over this Point Dume and hit the beach again at Ramirez Canyon, sometimes called Trestle Bridge Canyon. There is a big, long railroad bridge there probably 300 feet long—250 or 300 feet long. At this point
2150 sometimes when the tide was high so that it was hard to drive on the sand, we drove over a mesa some places 100 yards from the shore and some places a half a mile from the shore. When the tide was low we would rather drive the sand and pull the sand down along here (indicating on map). If we drove over the mesa from Ramirez Canyon, why we would go out here at about the junction of the Escondido road at Latigo Canyon. We also called it Dry
2151 Canyon because there was no water there, close to the ocean, and there we would hit the sand. At times when the tide was high, before this railroad was covered up and turned into a road, I drove over the railroad above the ties in order to get by a rocky bluff that stands along here somewhere. I think this is the rocky bluff (indicating on map), Rattlesnake Point. From Rattlesnake point a mile and three-quarters west, two or three spots there it is difficult to get by. It is west of Corral Canyon. I believe it is

2152 west of Sosto, right in this neighborhood. (Indicating on map.) There is about a half a mile there at three different points it is hard to get by in high tide, or sometimes a medium tide, and I have, before the railroad was covered up, drove over the railroad several times to get by, and then somebody dug it out so it was impossible to drive over those. One time I had to camp about six or eight hours and
2153 wait for the tide to go down. Another time I drove a portion of this railroad to get by a bunch of rocks, and then pulled down through the sand, almost straight down, about 50 feet. The sand was loose and the horse kind of slipped down. Then we drove along this sand a portion of the railroad and crossed this railroad several times down to about two miles from the Malibu Creek; about two or two and a half miles west of the Malibu
2154 Creek we pulled in and hit along the dry land quite a ways and then crossed the mesa. At one place we got about a quarter of a mile from the sand and another place a hundred or one hundred and fifty yards, and crossed the Malibu Creek I should judge about a quarter of a mile from the ocean, maybe a little bit more or a little bit less. Then we took an oceanly direction again and pulled out close to the ocean and stayed along between the top and the dry sand on clear down to the end of the ranch. In some

2155 places we would vary a hundred yards from the ocean and other places we would be a little bit closer. It is not a fact that in traveling from the western extremity of the Malibu Ranch to the eastern extremity, we, except at times of high tide or some unusual condition of that kind, followed the black dotted line indicated on this map, Defendant's Exhibit 6. We followed it to a certain extent excepting at Ramirez Can-
2156 yon. I believe it is not black dotted. Ramirez Canyon to up here—now then, in any kind of a medium tide, indicating the eastern side of Point Dume. In any kind of a medium tide of two or three feet we pulled in over the Ramirez mesa for a distance—I couldn't say, a mile and a half or possibly two miles. At all times the gates were always open and we had free access to it, at all times up until—in fact the first time I broke a gate at this upper canyon I believe the
2157 gates were not locked. I knew that Judge Oster had decided that it was a private road. It is a fact that the line which I have just traced indicated by the black dotted lines coincides with the most southerly line marked on this Defendant's Exhibit 12, indicated here by the white dotted line as being the most southerly, all excepting over the Ramirez mesa, we traveled that whenever it was high tide. This is the line I have just traced, excepting over Ramirez mesa and I traced the same line on the big map.

2158 We traveled in high tide over Ramirez mesa. I knew at that time it was a private road; after this decision I knew it.

Q. Now I will ask you to point out the road that you traveled the day that the gates were broken, beginning at the western extremity of Defendant's Exhibit 12. You were coming in an easterly direction from your home. We drove down the dotted line close to the ocean. We did not go down on the dry sand, but close
2159 to it, and then we turned and went under the high bridge, the Ramirez trestle bridge up this dotted line and over the Ramirez mesa, this red line, I never traveled at no time in my life. There was a gate at the intersection of that red line and this white dotted line; it was not locked; I could not say if it was shut, though. After I got on the northerly white dotted line we went down across this horseshoe bend at
2160 Latigo Canyon. Instead of going out on the ocean, on the dry sand, as we had always done in any kind of fair tide, they had erected a three or four wire barbed fence and kept us from going on the dry sand. We stopped and held a consultation and I told the gentleman that it was just as much hard to break the three or four wires as it was the gate, and if we broke the gate we would have four or five miles of sand and it might have been possible to get by the rocks and it might not, as it was a

2161 medium high tide and it would have been possible that we would have to drive the stretch of dry sand to make the trip. That stretch of dry sand was the old road at low tide. Before this new road was built there was several strips on this railroad that we pulled up on, two or three hundred yards; sometimes a half mile, to rest the team. I expect it was railroad right of way, a portion of it was anyway, we pulled on the ties and a portion on the side. After having
2162 this consultation, the first gate we broke was in this neighborhood here (indicating), across the red dotted line, east of Latigo Canyon, right in that neighborhood, within a couple of hundred feet. Then we drove down the dotted line. I couldn't say just exactly where the next gate was, but if I remember right there was, I believe, seven gates—five or seven gates in all these red streaks here, and I wouldn't say if
2163 there should be any more red line down here or not, but in all this new road that was erected there were five to seven gates that we broke. In the course of my traveling along that road I observed side gates going out on to the ocean sand. To locate the first one that I observed of the side gates, it would be pretty hard to locate the exact location. At that point east of Latigo Canyon there was a gate going into the hill, the Escondido road. There was a gate south towards the ocean that would have led us to the

2164 old highway. If I remember, it was locked. We didn't break that and go to the old highway because we had no desire to sacrifice our team and their strength, and after we broke one gate we might as well break them all.

Q. In order to get across the ranch, you broke all these gates? A. In order to stay life in ourselves and families, we did. We left home for that purpose.

2165 Mr. Anderson: I move to strike out the portion of the answer "In order to stay life of ourselves and families, we did," and leave just "we did," which is in answer to the question.

The Court: Motion denied.

(Exception No. 29.)

Mr. Anderson: It is a conclusion of the witness that he could not travel on the sand to get something to sustain his family.

The Court: No argument, gentlemen.

2166 I observed several other side gates leading in to the ocean on that road before I reached the easterly boundary of the ranch. Some of these gates that we broke led out to let us down onto the sand on the lower road.

Q. And the only reason that you did not break through any of these side gates and get on to the old highway was that you did not desire to strain your horses by using the old highway? A. I just stated that some of these

gates led out to the sand on the old highway, and we broke them to get on there.

Mr. Anderson: I move that that be stricken out as not responsive, and that the witness answer the question. A. Making this trip.

Mr. Anderson: Just a moment, if the court please.

The Court: Motion denied.

(Exception No. 30.)

Mr. Newby: Will you please state where on the trip you broke any side gate in order to get on to the old highway? A. Well now, the exact location is pretty hard for me to tell. It is pretty hard for me to tell the exact location, because I never kept no track of those gates or how far from the canyon or rocky bluff or anything, but there were several places that it was possible to drive this dotted line and pull up on this road with a little slope or something, and at each and every one of these places there was a gate erected in order to keep us from pulling up on that good road. That is why this number of five to seven gates was erected on that stretch, in order to keep us from pulling on these strips of new road indicated by this red line. While we were on the red line, there was nothing to prevent us from breaking the gate if we were so disposed and getting out on the highway.

Q. Now, will you indicate on Defendant's

2170 Exhibit 12 at what place on the old highway you first got on that road? After going over the red line, where did you first come to the old highway? A. Does this red line represent—

Q. Newly constructed road. A. Between the Malibu Creek and the Ramirez Canyon?

Q. Yes. A. I should judge it would be right here, then (indicating).

Q. At Puerco Canyon? A. We pulled off the old road on to the new one.

2171 Q. That was the first place? A. I believe it was the first place we pulled off or broke a gate to get on to it, the newly constructed road. Being on the old road we didn't continue on the old road because we didn't dare to sacrifice our teams' strength in pulling the dry sand. In other words, we preferred to break private property and trespass upon a private road rather than strain our horses on the old highway. I

2172 went into the present location where I have been living the last Sunday in May in 1911; that was my first trip in the neighborhood. I got in over the beach road, through the Malibu Ranch and up the Mondell road; along this same dotted way that I have indicated, and over the Ramirez mesa. I did not know at that time that there was an injunction in force preventing the Rindge interests from interfering with any traffic; I didn't know a thing about the condition of the road in any way, shape or form. I found it

2173 open; I didn't know the reason for it being open. I don't believe I learned that it was kept open by injunction. Probably the first time that I ever knew it was closed to traffic was the first time I broke the gate at this upper canyon; I believe it was in the fall of 1915. During all of that period of time from 1911 to 1915 I had uninterrupted means of ingress and egress to my place and traveled this dotted line I have indicated. During that period of time I owned
2174 under cultivation about seven acres or eight acres, in that neighborhood. I didn't strain myself any in grubbing the brush; I took my time at it. I was up there for the purpose of opening that up for cultivation; that is my purpose, to make a home out of my place; and in four years I have gotten under cultivation seven acres, in that neighborhood. I was never prevented from hauling out any of my produce before 1915. I
2175 hauled things out of that settlement during that period of time over this Mondell and Malibu road. I could not tell you approximately the elevation at my property line along the Mondell road, say opposite the ranch corner there. How steep the Mondell road is going north from the ocean is pretty hard to tell, it is a very steep road. It is a fact that with certain loads I unloaded my teams at the bottom of that grade. Up that road I drove a two horse wagon and hauled about a thousand pounds, and I hauled

2176 the school house in and the furniture, and I estimated the loads were 1600 pounds with four horses, over the Mondell road. There is three or four very steep grades before you get clear to the top. The first grade going up from the ocean, with the bends in the road, it is right at a mile long, more or less. I could not tell you about the per cent of the grade. I characterize it as very steep. The next steep grade on the
2177 Mondell road is about a mile and a quarter or a mile and a half from the ocean; it is not so long; it is a couple of hundred yards. That is about the same thing as the first one. The next grade before reaching the summit we call "V" hill. It is probably two miles from the ocean. It goes down into a canyon and up again. That is about like the others. When I get to the summit I do not know exactly what the elevation is, about 1500 or 1600 feet. That
2178 third grade is about the same thing as the other two. It is pretty constant incline, going north, until you reach the summit, difficult to negotiate with the wagon, with any considerable load; you have to take a pretty light load over it to make it.

Q. How far west of the Ventura county line and the Los Angeles county line does the southerly end of the Mondell road come? A. That is impossible to tell; it is possibly a mile and a half or three-quarters. The nature of the inter-

2179 vening territory between the point where it comes south and then turns east to Santa Monica is kind of a mesa and crosses three or four deep ravines and horseshoe bends in order to get around; it is a fairly passable road. I do not know who built the road; it was there when I went there.

Q. Now does the Mondell road, when it turns easterly to the county line, go north or
2180 south of the red line which is the proposed right of way? A. Judging by the surveyor's stakes it just about hits it square.

Q. What surveyor's stakes? A. The county surveyors. I know when they were put there. I saw the man working on the ground. The first survey was in the winter of 1915-16 and the second one was in the summer some five or six months later. I saw the stakes both times, practically two sets because right at the county
2181 line, I pulled out a lath myself and it was renewed afterwards.

Q. Isn't it a fact that the old Mondell road strikes the county line at the old Mondell road, when it turns east, that that point is about 150 feet north of the proposed right of way if projected west? A. No, sir, I should judge that it is just about the exact location.

Q. The Mondell road is indicated, is it not, on Defendant's Exhibit 6 by a black dotted line? A. Yes, sir. I understand that that indicates

2182 the Mondell road. We call it the Mondell road, where it starts over the top, the other road, is the old Marion Harris-Jasper Thomas road.

Q. Isn't it a fact that the Mondell road terminates at a point west of that land indicated by the purple, or west of the county line—and I will explain for your information that those purple lines, the territory represents Rindge property, outside of the Malibu Ranch. A. Yes, sir—Read the question. (Question read.)

2183 A. Do you mean that it terminates above this?

Q. Yes. A. No, sir. We consider that the Mondell road terminates on the side of the hill somewhere, it is in the red, or a little lower down, I should judge about here, and hits into what is known as the dotted line across the Marion Harris-Jasper Thomas old homestead. It is pretty hard to tell the exact location. This

2184 dotted line extends up Yerba Buena Canyon past the Rindge property, into William Houston's yard.

Q. Now, if you will please indicate on the map what you consider the southerly terminus of the Mondell road, we will ask Mr. Scotton to mark it with a red mark. A. I should judge it would come down in here about somewhere, along in that neighborhood, at the foot of the hill.

2185 Mr. Newby: Now, indicate some number so as to make it certain.

(Mr. Scotton marked on map, Defendant's Exhibit 6.)

Mr. Newby: How have you marked it?

Mr. Scotton: With a circle marked 16 at a point where the Mondell road comes down from the hills in a southwesterly direction.

(Continuing.) The figures in red, number 16, and the circle and red line, indicate the
2186 southerly terminus of the Mondell road, as I understand it. When I traveled over this road that I have indicated, I got to the southerly terminus of the Mondell road, as indicated by the circle. Then I traveled this place indicated by the black dotted line going easterly.

Q. And that is the correct location of the road that you traveled? A. Well, I couldn't say as it is the correct location, but it is in that
2187 neighborhood. There is no other road except that one; only one road that I ever saw there. I can not tell exactly the approximate distance of that black dotted line, for the line representing the road west of the Malibu Ranch line, between the southerly terminus of the Mondell road and the county line there varies quite a bit. The road is crooked. It is about a mile and a half, the distance from the point indicated by 16 to the county line, in that neighborhood. In some places I should judge it is 100 yards and

2188 some places it is a quarter of a mile, possibly 100 rods. There might be a little spot a half a mile. It is crooked. Where it crosses the Ventura county line, it is a little bit hard to state approximately how far it is north of the ocean. It is in the neighborhood of 200 yards. I couldn't say; I never measured it or anything. I am just guessing at it. That is my best judgment, in that neighborhood.

2189 Q. Now, since the time that you have stopped going through the Malibu Ranch road and this Mondell road, you have traveled out in the other direction, have you? A. Well, I continued to use the Mondell road and tried even at the present time, but to get any provisions or anything I travel the other direction.

On the Mondell road at the present time I went to visit several of the neighbors right in the near future, and I have went the full length
2190 of the Mondell road and down to the county line, oh, I should judge about three months ago the last time. I went over that dotted line in that neighborhood. I went along the road. That is the only road that was there. I went to Arroyo Sequis Canyon, and I traveled the same road up there at the county line that I had always traveled before. Did just the same. They plowed a little there; it might have been moved a foot or two, but it is approximately the same place. In order to get provisions I go the other way,

2191 most generally the Guadalasca way. I went the Triunfo way a little, but very little. Either one or the other of those two roads, Guadalasca or Triunfo, I have used for that purpose ever since the Malibu ranch has been closed, even since last August, a year ago, August, 1917. Prior to that time I went over the Guadalasca Ranch once, to pay my taxes, and broke a gate in order to get through it; that was in the spring of 1916. I
2192 was riding a horse. I couldn't see any way of getting through without breaking the gate. There was a lock on it. I didn't ask permission; there was nobody there to ask permission. I never went either one of those roads, at any other time prior to the closing of the Malibu. I knew before the Malibu Ranch was locked, as a positive fact, that my neighbors got in their provisions over the Malibu Ranch. Before it was locked all of my neighbors came out through
2193 that way except Bruno Persh and the Serrano family, and I never had any neighborly dealings with them—hardly acquainted with them up to that time. They had permission and keys to travel this piece of road, the Guadalasca, that leads to Oxnard and Hueneme. I knew in 1915 that they had traveled that way; I knew those two families had. I stated on my direct examination that I had traveled over a trail from Triunfo post-office to the Yerba Buena settlement. Starting from Triunfo post-office, there

2194 is a fairly good road to the Russell ranch-house. You turn there. It is pretty hard for a man to tell what direction it is. I should judge it is the ocean direction anyway. From Triunfo to the intersection is in the neighborhood of three-quarters of a mile or possibly a mile; then the road turns westerly, a fairly good road with the exception of the fact that it crosses a big creek here, and there is no bridge, and at times it is impossible to get over it, in the rainy season.
2195 The distance to where it turns south is about a mile and a half or a mile and a quarter, I should judge. You go south, crossing the creek, and we pass along the side of a little lake known as Mathieson Little Lake, driving past this lake and coming into the creek at the other end, we drive into the lake and it is impossible to get through there even on horseback, for sometimes a week, in the rainy season two or three weeks.
2196 I couldn't say the distance of that southerly stretch to the easterly end of the red line which I have marked first; a mile and a half or two miles. The distance across the southerly end of Mathieson Lake, where I say at times the traffic is interrupted, is possibly 300 feet, in that neighborhood. Following down here, then we turn off and cover a raise, a fairly steep grade, an automobile can get over it, about in the neighborhood of the red line, and we come across to Mathieson's line, a wire fence, and get into Mr.

2197 Johnson's yard, it is in this neighborhood somewhere. That is at a point southwest of the figures 1728. The distance to that point where the red dotted line commences, according to the automobile figures, is about 5 miles to Triunfo post-office. The distance represented by the red line is from a mile and a half to a mile and a quarter. It is a mile and a quarter, possibly, all this here, is the same distance, it is maybe a mile and a quarter. On the map there it is
2198 shown as being the same distance—there ain't much difference. And then we follow on horseback, around the trail here, until we hit the base of Triunfo Pass, and it is almost impossible for a horse to carry a man up. The distance from the figures 1728, at the end of the red line, to 2227, on the base of the grade, the foot of the hill, is, I should judge, a mile and a half or mile and three-quarters. It is pretty hard to tell
2199 what is the length of the hill. I expect it is about three-quarters of a mile straight up. I do not know the elevation at the bottom of the hill. At the top of the hill there is a bench mark, 2227 feet. This trail passes about 30 feet under this bench mark, or lower than the bench mark so that where the trail passes over the pass it is about 2200 feet; to the bottom, I think it is about three-quarters of a mile. From here, coming up this hill that trail is so narrow that a horse has to step with one foot in front

2200 of the other to make it. The character of the mountains is very, very steep; places there is sliding rock, and it is very dangerous for a horse to walk over it. It is a flat, sliding, rocky formation. In the top of this pass, there is a fair horse trail, where a horse can carry a man with reasonable ease, down along about where the dots are, in that neighborhood, into Henry Mondell's yard. How far from the top of the
2201 mountain it is to Mondell's yard is pretty hard to tell. I should judge it is about six miles. That is a fairly good horse trail. A horse can carry a man over it all right. After leaving Mondell's, it is possibly a half a mile, and then we turn to the ocean and there is a fairly good wagon road from Mondell's road to my place. We pass over it in wagons. The distance from Mondell's house to the Triunfo post-office over the road or trail is in the neighborhood of 12 or
2202 13 miles. To make that trip I have walked it in about four and a half hours, and I have never made it in less than five hours with a horse, and generally five and a half hours. My nearest neighbor is Mr. Mondell, I guess. He was living there when I went in. Of the road between my house and Mondell's, there was some that was built when I went in; some of it was built the next year afterwards, and some that has never been built. We just simply drive over a level strip of ground. Of the gates we had

2203 to open on that Triunfo road to my place, four is the lowest, I believe, I have ever opened, and I have went through there when I opened seven or eight. They are not locked; I never found any of those gates locked. I have never seen anybody do any work on the road that I have just traced on the map. I saw the settlers do some work on this horse trail, indicated by the dotted red blots there. I saw settlers work on
2204 that, but on the road I never saw any work done. I have passed over it when I could see that there had been work done, but I don't know who done it. There are about 40 people in that settlement right at the present date. They represent 15 families. About three years ago there were 76 persons. They were right there and counted at the picnic, every one of them actual residents of Yerba Buena. I couldn't tell just how many families. Some of those additional
2205 36 people went into that settlement before I did and some after I did. They were not all in there, between the years 1907 and 1911. I went in in 1911, and they were not all there. When I went in there were six or seven or eight families. I know them all, and the balance went into that settlement after 1911; they moved in. Some of them might have filed on their holdings before, but they came in after that. That is the way I got my land, filing upon Government land, under both the Timber and Stone Act and

2206 homestead. At the present time I have three post-offices, Triunfo, Newberry Park and Santa Monica.

By the Court: I say there is a post-office at Triunfo Pass. That supplies postal facilities to the farming community around Triunfo Pass. They get their mail there, and the majority of the people in Yerba Buena get their mail there. There is a little farming district around Triunfo Pass, the Russell Ranch and the Conejo Ranch—
2207 several.

By Mr. Newby: I travel to Newberry Park over the dotted line from Guadalasca or Broome Ranch out to the old Conejo grade and up. When I travel over the same road, I do not then go west on the state highway. I follow this dotted line along here (indicating on map, Exhibit 6). I go down here to Sycamore Canyon, up Sycamore Canyon here and there is a trail
2208 runs up here and hits the top of this old Conejo grade. Then I go in an easterly direction towards the ranch house here,—I judge it is about here—and then turn and go down here, and then I make another turn in a zig-zag direction and I should judge Newberry Park is over here (indicating on map). Yes, here it is. It is a mile or so after you get into the state highway. That is not a good road from my place going that way. At the present time we have a fairly good horse trail to Sycamore Canyon

and up Sycamore Canyon until we cut up across the hills here; and then it is a very poor—very, very poor. When we get out here (indicating on map, Exhibit 6) we hit a good road then to Newberry Park. From Sycamore Canyon along here for possibly three or four miles you can drive a wagon, and you can get a wagon through the brush clear out. There is no road there whatsoever—just simply drive over the mountains. When we drive over here we go through a barley field that is rented from the Broome ranch by Ed Borcher, drive through his barley. (Indicating on map, Exhibit 6). There is no road of any kind and in order to get an empty wagon out here and up the steep grade, you must have nothing in it, only a good team hitched to it, and in order to come in and come down that hill with any kind of a load you must tie all four wheels in order to get your wagon down, even though you have good brakes. That grade is at least 400 feet; maybe a little longer. I do not know the elevation. It looks straight down, when you start. I do not know the grade. I stated upon direct examination that I had been refused the privilege of riding on the cars of the Rindge Company. I did not offer to pay any fare.

2212 *Redirect Examination*

By Mr. Burnell:

At the time I attempted to ride on this railroad no one asked me for any fare. I did not see any persons there in uniform such as usually is worn by conductors or brakemen or any kind of a uniform.

Q. Did you ever see, on that railroad, at any time, any persons, conductors or brake-
2213 men's uniforms?

Mr. Anderson: Objected to as incompetent, irrelevant and immaterial, not redirect examination.

The Court: Objection overruled.

(Exception No. 31.)

I never saw any passenger coaches on the railroad. This car that I tried to ride on was a flat car and was in charge of two Spanish fellows: I did not see any ticket station. I
2214 asked these Spanish fellows if I could ride on the car.

Q. Were you ready, able and willing to pay a fare, if a fare had been asked of you?

Mr. Anderson: We object to that, if Your Honor please.

The Court: Overruled.

(Exception No. 32.)

A. If it was a reasonable fare, yes.

2215 By Mr. Burnell:

At the time that I and the 12 residents of Yerba Buena district went through the Rindge Ranch and broke the gate, we did break gates and other property other than the breaking open of those gates which prevented our passage through the ranch. In order to cross the Lachusa Canyon bridge, in order to stop us from crossing the Lachusa Canyon bridge they had taken up the flooring of the bridge, a good
2216 wide space, 8 or 10 or 12 feet, or so, and we went down the canyon to where the hog corrals were, and there was a small bridge there in order to cross the runway and we tore up the floor and brought it up and put it down on the main road bridge and made us a floor and proceeded across. There was no way that we could have crossed where the bridge had been torn up without making a new flooring to the
2217 bridge. Apart from that, neither I nor any other members of the party broke anything else. It was a fact that my family and all others needed provisions. We had borrowed from one another until the whole neighborhood was practically out of provisions. On our return trip we found the bridge broken, so that we could not pass, and we found the gates which we had opened on the way down to Santa Monica locked up again; all of them were relocked. In regard to the seven acres of land that I have cultivated

2218 and had cultivated prior to 1915, I changed work with some of the neighbors, and changed back with them. The nature of the ground before it was cultivated was brushy land and I had to clear that. It is impossible for me to state how long it took me to clear this seven acres, because I have always had cattle more or less in the country, and I spent a good deal of time running around different places, and I never have had time to get right in and work clearing land.
2219 I used the spare time that I could take from the attention to the cattle to clear the land. I have cleared now about seven or eight acres. I haven't cleared any more because I am clearing a little bit every year, but it takes most of my time taking care of my fruit trees and running after the cattle, so I have hardly any time to put in clearing the land. What little I have cleared does not amount to much.

2220 Mr. Burnell: Is it possible for you to take wagons out and bring wagons in to your place by any road other than the road through the Malibu Ranch?

Mr. Anderson: We object to that as not redirect. It was gone into fully on direct and on cross-examination.

The Court: Overruled.

(Exception No. 32.)

A. It is impossible to take them out any other route.

2221 Mr. Burnell: Now, prior to the year 1915, what was the general nature of the trail or way by which you could get out through the Guadalasca ranch?

Mr. Anderson: I object to that as not redirect. This has been gone over and reiterated by us.

Mr. Burnell: I think not, Your Honor. He was asked on cross-examination about his knowledge as to Serrano and somebody else go-
2222 ing out that way.

The Court: Read the question. (Last question read). Overruled.

(Exception No. 33.)

A. About a half or three-quarters of a mile from my house, getting up on a ridge, you drop over into this Serrano canyon. It was a fairly good trial. A two-horse team could go over it with a sled. And after you get on top, when
2223 you drop down into this Serrano canyon, the trail was almost impassable, it was so steep and narrow and brushy that a man could not ride a horse over it.

Mr. Burnell: How do you get your provisions in at the present time?

Mr. Anderson: I object to that as not redirect. That was fully gone into without any question.

The Court: Overruled.

(Exception No. 34.)

2224 A. Sometimes I make the entire trip from Newberry Park in a-horse-back, packing them; sometimes I take a wagon, a borrowed wagon, from Sycamore Canyon out and bring it into Sycamore Canyon and load my stuff onto a horse and pack it home two and a half or three miles; and sometimes I bring a light pack from Triunfo Pass in horseback. I use plows and harrows in cultivating my land. I had them in
2225 before the road was closed. You could bring a walking plow in on a horse's back, or you could take any heavy plow apart and bring it in on a horse's back, and put it together when you got it in.

Q. Could you bring a thresher in that way?

Mr. Anderson: I object to that on the ground that it does not appear that there are any threshers in that neighborhood.

Mr. Burnell : There are beans raised in that
2226 neighborhood.

The Court: Overruled. I think you are prolonging this examination unnecessarily. Objection overruled.

(Exception No. 35.)

A. Yes, sir. There was a threshing machine brought into the neighborhood this year by Henry Mondell.

(Continuing). It was brought in to Ed Borcher's place in an automobile; it was loaded onto a wagon there and taken most to the top of this

2227 old Conejo grade, and over the top of the hill and over up to Sycamore Canyon, and up Sycamore Canyon to Serrano Canyon. It was put on a sled there. They worked, the Serrano boys, and Persh and Ed Borcher, to widen the trail and all the loose parts were taken off of it to make it as light as they possibly could, and then I believe they hauled it from Serrano's place up to the foot of this hill on a wagon, a
2228 distance of a mile or so. Serrano has an old wagon at his place. Then it was put on a sled and hauled up this steep hill out of Serrano Canyon up on top and down through my place and over to Mondell's ranch on a wagon—on a sled I should say. It was hauled all the way from Serrano Canyon into Mondell's place on a sled. Then the parts were put together again and it was used. When I take the trail to go to Triunfo pass, I have to go first through Mr.
2229 Mondell's yard. That is the yard around his house; and then in getting out on the other side I have to go through the yard of a man named Johnson. Both Mr. Johnson's place and Mr. Mondell's place are private property, and no public road so far as I know. No road of any kind; just simply a horse trail.

Q. With reference to the time when the Rindge Malibu Ranch was closed to your travel —with reference to that time, when did the 36 residents of Yerba Buena township that repre-

2230 sents the difference between the 40 that are now there and the 76—when did they leave?

Mr. Anderson: Objected to as not redirect, and also on the ground that it is ambiguous. There seems to have been, under this witness's testimony, two periods when the ranch was closed, one in 1915, when they broke through the gate at Lachusa, and the other at the time of the injunction last year. It seems to me that there is an ambiguity there.

2231 Mr. Burnell: To cure that ambiguity, I will ask another question.

The Court: Objection overruled. Read the question.

(Last question read.)

Mr. Anderson: It is understood, Mr. Burnell, that our general objection to all this line of testimony is still standing?

Mr. Burnell: Oh yes.

2232 Mr. Anderson: Yes, that will save time.

(Exception No. 35.)

A. Well, they left at different times. Some of them left before the road was permanently closed last year, and others left about that time, and one—I guess one since that time has left.

(Continuing). The most of these 36 people left during the period of 1915 when we was having this trouble over the road, and during that period and up to a month or so ago. They practically all left during that period. I couldn't

2233 just state the date of that picnic. I believe it was about the 4th of July, or Thanksgiving Day of 1913. We had a big picnic, there was a couple of times we had a picnic and there was the same number. One was on the 4th of July and on Thanksgiving and which one had the largest number I don't remember.

Recross-Examination

By Mr. Newby:

2234 One person has left since the road was closed, the rest of them left prior to that time.

Q. Now, did any of these persons, were they homesteaders, living on the land, prove up in the meantime and leave?

Mr. Burnell: Objected to as calling for a conclusion of the witness.

The Court: Objection sustained.

(Exception No. 36.)

2235 Q. By Mr. Newby: Were any of them who left homesteaders?

Mr. Burnell: Objected to as calling for a conclusion of the witness, and not the best evidence.

The Court: Objection sustained.

(Exception No. 37.)

2236 Afternoon Session, 2 o'clock P. M.

S. HILL BERKLEY,

a witness called on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I reside in Santa Monica. My official title is commissioner of public safety. Santa Monica is governed under what is known as the commis-
2237 sion form of government. There are three commissioners. I am the chairman of the present board, but generally known as mayor. I am familiar with the proceedings and actions taken by the board of commissioners during the past year, 1917.

Q. Mr. Berkley, I show you here what appears to be a certified copy of a resolution, and ask you if you recognize that (showing docu-
2238 ment to witness).

Mr. Anderson: The resolution is certified by the city clerk, isn't it?

Mr. Burnell: Yes.

Mr. Anderson: I think that is all the identification necessary.

Mr. Burnell: Very well. We offer in evidence that resolution. A certified copy of a resolution adopted by the commissioners of the city of Santa Monica on the 10th day of July, 1917.

2239 Mr. Anderson: To the offer of that resolution, we object in so far as the main case is concerned, upon the ground that it is immaterial, irrelevant and incompetent; that it bears date more than a year after the institution of this action on the main case; that it is dealing with a matter that is not within the official jurisdiction of the board, and amounts to nothing more or less than a mere expression of opinion of the
2240 members of the board, even though it may have been officially passed. In other words, that it is not one of the matters with which the board of trustees, or the board of commissioners of the city of Santa Monica — over which they have any jurisdiction, and carries with it no greater weight than the expression of opinion of any other congregated body. As far as the Little Alisos Canyon road is concerned, we offer all the latter objections, and so far as the
2241 beach road is concerned, we offer all of the latter objections, the objection that it was passed after the commencement of those actions not being included.

Mr. Burnell: We offer as a separate offer for the main case of the Malibu road, and then we make a similar offer in each of the other two cases. In behalf of the first offer, our theory is that it is admissible in evidence directly upon the question of necessity, as showing that one of the municipalities, and the one nearest to the

2242 proposed road, has taken official action in requesting the board of supervisors of this county to proceed with the acquisition of such a road. With regard to the other two cases, on that theory also, and likewise upon the theory that it is competent in view of the case so far made by the defendants, for us to show all the matters that were considered by the board of supervisors of this county in ordering the road
2243 condemned, and in resolving that the road was necessary.

Mr. Anderson: Of course, I presume you intend to connect that. There is no evidence here at the present time that this has ever been transmitted to the board of supervisors.

Mr. Burnell: We will connect that by showing that a copy was transmitted and received and duly considered by our board of supervisors.

Mr. Anderson: Assuming the connection will
2244 be made, we simply rest on the objection we have made.

The Court: What is the theory of the offer so far as the main case is concerned?

Mr. Burnell: Upon the theory that it is evidence as to the necessity of the road, in that it is the official declaration of the city of Santa Monica, through its official legislative body, requesting the supervisors of Los Angeles county obtain such a road and to go ahead with the proceedings for the obtaining of such a road. In

2245 other words, we think the necessity is proven in a large measure by the public demand; and this is evidence of the public demand—not of a few individuals, but of the city acting through its official representatives.

The Court: It is admitted, however, that the resolution was passed after the action was taken?

Mr. Burnell: After the first action was begun on the main road.

2246 The Court: Is it the contention of the county that the necessity and public use can be shown after the action has been brought?

Mr. Burnell: I think so, Your Honor. That is, the question to be determined is not whether a road was necessary in 1916 alone, but whether there is at the present time or in the immediate future a necessity for a road.

Mr. Anderson: We shall contend that the 2247 necessity is as to the date of the resolution and the commencement of the action.

The Court: I think I shall limit it to the two cases having been commenced subsequent to the passage of the resolution. The objection will be overruled as stated in the ruling of the court. The document will be received and marked Plaintiff's Exhibit "D."

Mr. Anderson: Is it admitted in all three cases?

The Court: No, the two cases mentioned.

(Exception No. 38.)

2248 The Court: Gentlemen, this document will be considered by you only in relation to the Alisos Canyon road and the beach road so-called. It will not be considered by you in determining the issues in the so-called main Malibu Ranch road.

Mr. Burnell: The document is as follows:

"Resolution #99, (Commissioners' Series).

Resolved, That it be the sense of the city
2249 council that this body endorse the movement to open a road through the Malibu Ranch and hereby request the board of supervisors of Los Angeles county to take such legal steps as may be necessary to secure such road.

Be it further resolved, That M. K. Barretto, commissioner of finance, ex-officio city clerk, be authorized to forward a copy of this resolution to the board of supervisors of Los Angeles county.

2250 I hereby certify the above to be a full, true and correct copy of the original resolution on file in my office, and that the same was adopted on July 10, 1917.

FRANK J. TOWNSEND,
Commissioner of Finance and ex-officio City Clerk.

By L. J. HOGGMAN, *Deputy.*"

And impressed with the city of Santa Monica seal.

The Court: Defendants' Exhibit "B."

2251 E. A. SMASHEY,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

My name is E. M. Smashey. I live in Santa Monica. I am a janitor at the present time.

Q. Calling your attention to defendants' Exhibit No. 6, being the large map here upon the
2252 easel, this is a photographic enlargement of the United States geological map. The black line at the top with the words "State Highway" above in red, is the state highway from Los Angeles to Ventura and north. The country below the state highway is the Santa Monica mountains. The purple line appearing upon the map is the north line of the Malibu Ranch, the Rindge Ranch. The purple line all the way around, indicating the boundaries of the ranch
2253 surrounding it. The point here where the circle appears is the Triunfo post-office. The point farther down in a southeasterly direction is Cornell. I will ask you to state whether or not you own any property in the Santa Monica mountains? A. I do. Township 1 south, range 19 west.

Q. This section north of the Malibu Ranch that is purple, is indicating the holdings of the Rindge Company or May K. Rindge. This particular piece being owned by the Rindge Com-

2254 pany. Just indicate where your holdings are. A. This 40, this 80 in section 20 and 40 in section 17, here and here (indicating on map, Exhibit 6).

Q. Now, will you have Mr. Scotton make a mark there.

Mr. Scotton: I have placed a blue cross marked X-17 at the intersection of the corner of sections 18, 17, 20 and 19. The township is township 1 south, range 19 west.

2255 (Continuing). That is where my property is located. I own there 160 acres of land, more or less. I do not live there at the present time. I have lived there; I left there in 1913. I took up my residence in February, 1912, and I lived there consecutively for 17 months. I have a family; it consists of wife, one daughter and five sons. At the time I was living there, all my family resided with me; at that time there was

2256 four children. At the time I lived there, when I wanted to go to Los Angeles or Santa Monica, I went going toward the ocean, down Encinal Canyon, what is known as the Marion Decker road, and then down the beach road to Santa Monica. I have been up there since I left there in 1913, several times. I don't remember when the Malibu Ranch was closed or about when; I remember reading about it in the paper.

Mr. Anderson: You may state to him, the latter part of July or first of August, 1917.

2257 Q. 1917, the ranch was closed, the latter part of July, or the first of August, 1917.

(Continuing). I have been up there since that time. When I went up since, I went the coast road to Topanga, up the state highway to Triunfo, up through the Russell ranch, up to the Little Dam and in the back country road. I went in a machine part of the way and walked the rest of the way. I went in the machine as far as Vaughan's and walked the rest of the
2258 way. My place from Vaughan's is, I should judge, about 2½ or 3 miles.

Q. Why don't you live there now?

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial. He left in 1913, which was long before these proceedings were thought of or even contemplated. Why he doesn't live there now is immaterial. He left long before the proceedings were commenced.

2259 The Court: You can cross-examine on that. I think that it is irrelevant testimony. Objection overruled.

(Exception No. 39.)

A. It would be almost impossible to live there now because of a lack of funds, for one thing, and you could not market anything that you could raise on the ranch so there would be any profit, on account of the transportation, lack of good roads. When I say lack of good roads, I refer to a road leading from my ranch

2260 to Santa Monica; all of them, to my ranch are not good. I can show you upon the map where I walked from Vaughan's.

Q. The point on the map X-5, has been testified to by the previous witness as being Vaughan's place. Let me illustrate the map further. The yellow marks upon the map, the yellow lines, what has been testified to as being roads at the present time. The little mark in
2261 green upon the map being Little Mathieson Lake, the portion where my pointer is near the words "Russell Valley," being Russell Valley, and the point of the circle being Triunfo post-office X-3 is the Charles Decker place; X-11 being the Marion Decker place. A. Starting from my ranch at this point, I cannot follow that road but it goes in a northerly direction, on the ridges and around and down Encinal Canyon to the Marion Decker road.

2262 Q. Indicating from the point X-11 or X-17, which you have testified to as being your place, in a generally easterly direction partly over the part marked on the map in yellow, indicating a road, to what point, do you say—about the Marion Decker place?

Mr. Anderson: We will stipulate that that has been testified to to be the Ernest Decker place.

Mr. Vallee: This being X-11. The witness passing upon the trip indicated, X-4, appearing

upon the map close to the figure 21 in section 21. A. On down to the beach road through Santa Monica; I have never been out the other way. I walked, I never drove it. The portions that I walked and also that portion that I rode, afterwards, across the country, down through here (indicating the line extending from the point X-17 to a point marked in blue, to a point X-2, and from the point X-2 to the point X-5, or a generally northeasterly direction). From Vaughn's place there is only one way to go that I know of. That is over the little piece of new road leading to the little lake on the Mathieson ranch, through the Malloy ranch (indicating point X-5 and little Mathieson lake, commonly called the Decker or Triunfo road. From there I went out to the intersection of the Decker road and Triunfo road with the Old Ventura road. Then across the dry wash and past the Russell house and then up to the state highway to that point where the road intersects the highway at "SS" in Russell Valley, and from there to Triunfo. When I say for lack of good roads, I mean that they are bad roads either way you go from my place it is bad roads for two or more miles, either direction, to Triunfo or down Encinal Canyon to the beach.

2266 *Cross-Examination*

By Mr. Anderson:

The kind of a road leading from my place to the Marion Decker place is a very poor road. I have traveled it with a wagon. The kind of road I have from X-17 to the Marion Decker place is a very rough, hilly road, steep grade, Some of it has had work done on it. So far as the trip to Santa Monica is concerned that is the worst part of it. I leave the hill from the beach
2267 road up Encinal, almost up on the hog track. I have not been up there since the road was dynamited. It is perfectly visible from the road. That road interferred with my carrying products, in and out; that was one of the reasons that I left in 1913. I left in 1913 because I could not make a living there. That is not one of the reasons, I could not make a living. I tried to cultivate at that time enough land to get
2268 my patent from the government, about five acres. I made the last trip in the automobile, last August. That is not the first trip since 1913. Every year I went in, in other years on the same road, the Triunfo. I went through there (indicating on map, Exhibit 6), to a little distance beyond the dam. The dam is a little lake on the Mathieson ranch. After I got beyond that I went in at one time on horseback and I think twice I walked; I came that far in a machine. *I* machine I came in as far as

2269 Vaughn's place was Mr. Auld's. He has a homestead up there. That is the way that he goes in and out. That is the only time that I have traveled in his machine that far. I never have seen his place. From Vaughn's place I followed the wagon road part of the way and took the two different trails in two places to lessen the distance. The trail I walked I couldn't drive over it with a wagon. From Ramirez Canyon on east I traveled on the beach and on
2270 the mesa. I have traveled both ways. The road has always been there. I traveled it when I first went up there, and I supposed they were public roads. The old road principally followed the beach for a long distance, was principally on the wet sands and where the waves washed; and at times when the tides would get higher, it would drive up into the drifting sands and make going very difficult. And at times we would have to
2271 wait for the tide to go down to pass certain points, at one place in particular, a little to the west of Rattlesnake Point. But at all events there are a number of difficult places there, hard to pass in the old days when we had to use what we have been pleased to call the beach road.

2272 H. T. MELOY,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

My name is H. T. Meloy. I live in Santa Monica. My business or occupation is farming. I own a little property in the Santa Monica mountains. I own a piece of land up there, I
2273 and Mr. Middlecoff together. I observed on the map when you were describing it to Mr. Smashey. It is pretty hard for me to point out on the map where my property is located.

Q. Now, I will show you the point X-5. That is what is known as Vaughan's place, and the point X-5 is north—the Ventura line is the line marked in green.

Mr. Anderson: Can't we agree on that without having him describe it? Mr. Scotton will
2274 mark it with my blue pencil.

Mr. Scotton: It is section 3.

Mr. Anderson: Mark that 18, Mr. Scotton.

Mr. Vallee: I will ask Mr. Scotton what he has placed upon the map.

Mr. Scotton: I put a blue cross and marked it No. 18, in the northeast corner of section 3, in township 1 south, range 19 west.

The Court: Does that indicate your property, Mr. Meloy? A. Yes, sir.

2275 (Continuing). I have 160 acres, more or less. I never lived there; nothing only camped there for a month at a time. The last time I was up there was last July. The first time I ever went up there was about 12 years ago. Between the time I was up there the first time and the time I was up there the last time, to go from my place in Santa Monica to my property in the Santa Monica mountains I built a road up there.
2276 I built the road right past that little dam you are talking about; south it would be about two miles up to the ranch. When I refer to the little dam I mean the little Lake. I built that piece of road about a year after I bought the land. At any time after I bought that ranch I did not use the road southerly to the Marion Decker place and down through the Rindge ranch; there was no road there.

Q. Do you know whether or not that strip
2277 of road from the little dam at the Little Mathieson Lake to the property that you own is private or public road? A. Well, we didn't ask anybody to cut us a road through there; just built it ourselves.

I don't live upon the property at the present time; I do not make my home there. I farm there; I have had a hired man there for a year at a time, farming it. I quit farming because I couldn't get nobody to haul up the stuff and stay there. The road was so bad that you can't

2278 pull a load up. That road that is so bad that I can't pull a load up is the very one that I built. It is just a trail; that is all there is to it. I guess I am familiar with a hill called Meloy Hill, Meloy grade, I believe. I never heard it until I got here in the court room. It is just a long, winding grade around a hill and it is steep. I have tried it up there several times with a machine. I never made it, although I have heard
2279 of some machines going up. I never made it. I have an Oldsmobile and I couldn't get up; and a team is loaded when they have got 500 pounds on.

Cross-Examination

By Mr. Anderson:

I am a farmer. I have many, many years been the principal well driller of Southern California, and farming with it. I have drilled wells in that whole section, for the Rindge peo-
2280 ple as well as others. I never have attempted to use the road over the Rindge place across to my place; I knew of a trail across there, but I never used it.

C. A. MIDDLECOFF,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live in Santa Monica. My business or occupation is hardware. Mr. Meloy and I own

2281 160 acres in the Santa Monica mountains, less one-tenth. There is one-tenth acre cut off there where the old grant comes in. I have never lived upon that place, except one month. I took my family over there and lived there one month the first year we acquired it. I was only there for camping; never lived there afterwards. I am familiar with the road from Triunfo into my property.

2282 Q. Will you describe that road? A. The road to the Ventura county line—

Mr. Anderson: I think we can stipulate that this witness will testify to the same effect as Mr. Meloy concerning that road. I don't see a necessity of taking up any further time.

Mr. Vallee: That is perfectly agreeable to us. Now, Mr. Middlecoff, are you familiar with the road from your property down to the Marion Decker place? A. Yes, sir.

2283 I have traveled over that road from my place to the Marion Decker place and then down over the Rindge Ranch, two or three times, about five or six years ago. The last time that I remember was about four years ago. The piece of road from the Little Mathieson lake to our place was built by Mr. Davidson that took up the land and it was washed out when Mr. Meloy and I got control of it, when we bought it, and we improved that road and fixed it up about five years ago. I do not at the present time

2284 farm any of that land because we are engaged in other occupations.

BESSIE M. KAPPLER,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live in Santa Monica mountains, in the head of Nicolas Canyon. (Witness indicates on map
2285 and Mr. Scotton marks on map, Exhibit 6.)

Mr. Scotton: I have placed a blue X and numbered it 19 in the northeast one-quarter of the northeast one-quarter of section 19, township one south, range 19 west.

By Mr. Vallee:

That is my property. I have 160 acres there; that is my husband's property. We own it together. I have a husband and one child. How
2286 long we have lived there I could not say exactly because we have lived in and out of there. We established a permanent residence there in the spring of 1908. I was there before that. I couldn't say exactly the first time I went there, but it was in 1906 and I was there in August, 1907. In August, 1907, and in 1906, and after that, when I would go to and from my property I went by the coast route, the old road leading up Nicolas grade on the east side of Nicolas Canyon, through the Malibu Ranch. I used that

2287 road off and on since the spring of 1908 and also in 1907. The last time I used it was in April, 1917, a little over a year ago. The reason we stopped using it was that we could not get through the Malibu any more. After that, for a while we went through Triunfo and from Triunfo post-office over a trail, part road and part trail, to our house. The road past Meloy Hill and Vaughn's and over that way into Los
2288 Alisos. Of the 160 acres we farm between 15 and 20 acres, I don't know exactly. We have cattle. Mr. Malden's and ours run together; I couldn't tell you how many we have without referring to the book, but in the herd there are 11 or 12 head. Mr. Malden is our nearest neighbor; he is sort of a foster brother of mine, and a partner and associated with my husband in business; he has a place next to ours.

Cross-Examination

2289 By Mr. Anderson:

The last time I was through the ranch was in April, 1917. I could have gone through up until the gates were closed; I don't remember making a trip or attempting to. The road down the east side of Nicolas Canyon in places is steep and rough, and other places it is a good road. That April trip was the last time I went up Nicolas Canyon. That was the only one of the roads which I used.

2290 Q. When you got down to the old road, how did you go along the beach? Did you go substantially along that black dotted line shown on the map on the southerly part of the map, dotted in black, Nicolas Canyon? You will see there is a dotted line running across the ranch. Is that substantially the route which you took? A. Especially coming down. I don't remember much about going up, but we kept to the beach, but sometimes we went over the mesa, but I
2291 don't remember doing it then.

Q. As a matter of fact, during the entire time you traveled over it, it was upon the beach itself? A. Well, you know there are so many different ways that you can go. There is Nicolas Canyon, just here, and then we crossed a canyon, Little Alisos, just beyond Lachusa, that is marked Nicolas on this map (Exhibit 6). Then we come to Lachusa Canyon where there
2292 is an alfalfa field and where the old adobe house used to be which was the old Lachusa residence. We took a road close to that house, coming down into the canyon, and there was a bridge. Before the bridge now there was put up, we came down practically where the alfalfa field is; down on a bridge and up again and across the mesa until you come to Encinal Canyon. I remember Encinal has a road running up the hog back. After we left Encinal going about a half a mile there is a steep turn

2293 down the beach. That is horseshoe bend. After we got down the road from there until we got to Zuma Canyon, I have traveled on the beach when the tide was low, and I have traveled up close to the hills on a sort of a road, and also over the mesa. I had permission to go through. The ordinary road was that road below the bluff. We never claimed any right to travel the mesa road excepting by permission. When the tide was out and we could get on the
2294 beach and sand we preferred to travel that way. And when the tide rose it drove us back into the sand. There was a sort of a road there. Then we crossed the Dume mesa, over a road that has been there for a long time, the old road, which at one time the county claimed to be a public road. When we got across the Dume mesa, we went across where the trestle is and sometimes we went across the mesa from Ramirez to Lat-
2295 igo. We claimed the right to travel the mesa without permission.

Q. Didn't you understand that at some time about 1913 the court—or some time about 1910, the court decreed that road across the mesa was a private way but the road along the beach was public? A. I confused those decisions. I think one judge decided it was a public road and one decided it was a private road. As to whether the gates were locked or not locked we crossed it when we could anyway. As between the mesa

2296 and beach road from Ramirez to Latigo we preferred to travel the beach road. When we could we traveled the beach road.

Q. Then from Latigo clear on to the Malibu, most of the way was on the beach with occasionally parts of the road up on the dirt? A. No sir, the first road, I remember distinctly traveling over very good road at points.

Q. You crossed the points on a good road?
2297 A. I mean back from Latigo to Pasqual Canyon, what is known as the rocks in there. Part of the way we traveled on a dirt road and part of the way on the beach. I do not remember that that road which I *was* was a good road was the old road built by Mr. Darlington. I don't think the Rindge Company people built it. It was constructed, it was a worked road, in places good, places bad. The last years I traveled it was a better road than it was some other years.
2298 I remember a time when there was trouble about using the new road on the ranch. There was a lawsuit between Mr. Fitzpatrick and Mr. Richter; I remember about that.

Q. During that time or just before it was necessary—isn't it a fact that the beach road, that part of it which was on the beach, had become very much neglected and worn out? A. I don't remember that year more than others. After the Spring rain the road is bad and then later on each one fixes it up and it gets better.

2299 It would be a better road in the Fall than in the Spring. From my place to the Charlie Decker place which is shown on the map as X-3, which is below the figure 20, to now get from my place to that place we have built a road within the last year, a very poor road but we can get over it. We can get through with a horse and wagon. The amount of a load we can carry is very light; not over 500 pounds. It doesn't
2300 go to the Decker place at all, but we have built a road into Los Alisos Canyon and Deckers have a road into Los Alisos Canyon.

Redirect Examination

By Mr. Vallee:

Q. How far is it from your place to the place where your road meets the Decker road? A. About a mile and a quarter. It is over a mile.

M. A. VENNAMAN,

2301 called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

At the present time I live in Santa Monica. I own property in what is known as the Yerba Buena settlement a little distance north or west of the line between Los Angeles county and Ventura county, 160 acres, more or less. My occupation is farming.

2302 Mr. Anderson: Now, if the court please, this testimony is on this Yerba Buena district and we wish to have it understood that our objection goes to his testimony.

Mr. Burnell: The same objection may go as was made to Mr. Richter's testimony.

Mr. Anderson: It has been made to all of the Yerba Buena testimony.

The Court: Same ruling.

(Exception No. 40.)

2303 By Mr. Vallee:

I have been a farmer all my life, practically, about 35 years. I own in the Yerba Buena district 160 acres, more or less.

Q. Now, I will ask you to step to the map and show us where your property is located. You have been in the court room and heard the map explained, have you not? This is the Yerba Buena settlement inside of the line here. A. I 2304 am in section 11 and I own the west half of the northeast quarter and the south half of the northwest quarter of section 11.

Mr. Burnell: Now maybe we can have Mr. Scotton mark it on the map. I will ask him to put it on there. I don't know what we would do without having Mr. Scotton to mark this map.

The Court: We will have to have him marked as an exhibit also. Has it been prop-

2305 erly marked, Mr. Vennaman? A. Very near, within a short distance.

Mr. Burnell: For the record, I will ask Mr. Scotton to kindly state what he has marked and how he has marked.

Mr. Scotton: I have put a blue X on the portion of the property owned by Mr. Vennaman and marked No. 20, at a point right where his house is and those marks so placed are in the north one-half of the north one-half of section
2306 11, township one south, range 19 west.

(Continuing). About ten acres of this 160 acres is in cultivation to peaches, apricots, blackberries, a few grapes, barley, beans and garden stuff, and a general garden. The ranch is being worked at present. My neighbor, Mr. Roy Lane, is working the place for me. I filed on that place August 2nd, 1911. I have lived there; I moved up there in January, 1912. I brought
2307 my family down about the 23rd of July, 1917. As near as I can remember it, the owners of the Malibu Ranch closed the ranch to travel about August 13th, 1917. It was before that that I brought my family down; it was before the gates were closed. I came down with my family through the Malibu Ranch. Previous to that time I had made my trips back and forth to my ranch through the Malibu Ranch. I brought in my supplies and provisions, and farming implements through the Malibu Ranch on the coast

2308 road, and also other things needed up there. Since the time the Malibu Ranch has been closed I have been up to my Yerba Buena ranch. I came down one time after the ranch had been closed with a through permit on the 16th of August, 1917. I was with the party of whom Mr. Richter and Mr. Fitzpatrick were two, as testified yesterday, coming through the ranch and breaking the gates. My object was to get
2309 provisions for my wife and children. My wife and children would have been suffering for lack of provisions in a few days when I took the trip. There was no other road or trail, or other means by which I could get into or out of my property. I heard the testimony of Mr. Fitzpatrick. I heard the testimony of Mr. Richter. Previous to the Malibu ranch being closed to travel I got down to the coast road over the Mondell road. I came down the trail down to the Mondell road
2310 and I followed the Mondell road then on around down to the beach road, the coast road, as we call it. From there on through the Malibu Ranch. I was over the Mondell road and the road with which it connects up to the Ventura county line before the closing of the gate, a good many times. During none of these trips did I ever find any gates across the Mondell road or the road down to the Ventura county line. No one ever prevented me or attempted to prevent me from passing that road. The road

2311 I call the Mondell road and also the road traveled to the Ventura county line were commonly and usually traveled by the public in that vicinity. So far as I know, it was an open road. At the present time my place is situated from the nearest open traveled road of which I have any knowledge about 12 miles. That is the state highway. The means of communication between my place and the state highway is a trail; it is known as the Triunfo Pass, traveled in
2312 a northeasterly direction up into and past the Little Lake and through the Mathieson ranch and the Russell ranch, and hits the state highway at Triunfo post-office.

Mr. Anderson: Can't we stipulate that that is the same trail testified to by Mr. Fitzpatrick?

Mr. Burnell: Yes, and by Mr. Richter.

Mr. Anderson: By Mr. Fitzpatrick and by Mr. Richter.

2313 Mr. Burnell: Witness indicating on Defendant's Exhibit 6 the same trail which was testified to by Messrs. Richter and Fitzpatrick, in testifying as to their means of access from Yerba Buena settlement to Triunfo post-office.

Mr. Anderson: So stipulated.

Mr. Burnell: Now, I wonder if you will also stipulate that his testimony as to the character of that trail will be substantially like the other two witnesses?

Mr. Anderson: Certainly.

2314 Q. Why did you move away from the ranch? A. Well, I took my family out in the first place because my wife became sick, with the intention of moving back; but when the gates was closed it was impossible for me to get my family back in and make a living.

Mr. Burnell: Was there any other reason besides your wife's health?

Mr. Anderson: Object to that as cross-examination.

2315 The Court: Overruled.

A. At the present time there was no other reason.

Mr. Burnell: Now, did you at the time that you left—did you or did you not leave with the intention of returning? A. I left with the intention of returning within a few months.

Q. Why have you not done so?

Mr. Anderson: Object to that as immaterial.

2316 The Court: Overruled.

(Exception No. 41.)

A. Because there was no way to get there.

(Continuing). Oxnard is the closest physician to Yerba Buena settlement that I know of. There used to be a road to Oxnard, as has been explained, through the Broome ranch, but they have closed that. That is the same trail or road that was testified to and described by Mr. Fitzpatrick, and the Broome ranch is the ranch that is sometimes referred to as the Guadalasca

2317 ranch. I have traveled over that trail to Oxnard horseback. At the time I left the Yerba Buena settlement there was between 70 and 80 people living there.

Cross-Examination

By Mr. Anderson:

I have a sled trail from my house down to the Mondell road. My house from the Mondell road is between three and four hundred yards. When I say "a sled trail" that is not a trail that
2318 I can take a wagon over; it is a trail that I take a sled and team over. I have not a wagon road from my house to the road. After that three or four hundred yards, from that point I have a fairly good road to the beach on the Mondell road. The highest point in the road is probably fifteen or sixteen hundred feet. From the beach to that 1500 or 1600 foot point is, I judge, about three miles. That grade is not as
2319 steep as the Triunfo at present. We don't travel the Meloy Hill. The grade on that Triunfo road that is steeper than the one I have on the Mondell is just below the bench mark.

Q. You misunderstood the question I asked you. I asked you after you came off that brush trail and got on the road, how does the steepest grade on the Mondell road compare with the grade on the road after you leave the road into the Triunfo? A. Well, the Mondell is a little more steep in places.

2320 Q. How far from the bluff to the north did you cross the Ventura county line on the old road running through the Rindge property? A. Well, I should think it was between 150 and 200 yards. So far as I know, that road was there all the time I was there, and there never has been any other, so far as I know. That is the road that was there the last time I passed over it. I last saw that road August 16th, 1917.
2321 And that road was then in the same place. I was one of the defendants in that case of Rindge Company against Fitzpatrick and others, and was served with the various affidavits, summons and complaint, including two of those blue maps, such as that on the board (Exhibit 12). On that occasion the first obstruction I met was a locked gate at Lechusa. After some altercation with the foreman of that camp at the time, they called him Shorty, we went through.
2322 It was not coming down that Fitzpatrick shot the lock off; I mean going to Santa Monica; he shot the lock off when we were going back. On that trip to Santa Monica there was a high post above the bannister, and we cut that off and threw the panel of the gate. We cut the high post off and got through that way. At that time the bridge had not been partly removed. I did not see any automobile there; I did on the second trip when we were coming back. It was on that second trip going back that the lock was

2323 shot at. I couldn't say as to whether he hit it. Besides his shot at the lock, the chain was cut. I was not at the gate at the time; I was watching the teams. That is the bridge right up next to the little guard house there, the Lechusa bridge. In the old days, when I traveled the road, there was no bridge. We crossed down in the creek; and that was over an old road that went through where the alfalfa field is now; and
2324 after a while the road was built clear up to the bluff and this bridge put across it. And that is the bridge that was there the last time I was over there, and the gate was on the westerly side of it. We traveled without obstruction coming down so far as I know, all the way through. I never broke another gate coming down; I didn't keep up with the party; there was some of them went on ahead.

Q. Some of them went on ahead. Now,
2325 calling your attention to this map exhibit 12, calling your attention to Ramirez Canyon which is at the extreme westerly edge of the map, I call your attention to a road indicated in red and to the north of the road, a road indicated by white dots to the side. That is the road you crossed on the trip going? A. On the white dotted line.

Q. Which did you travel coming back? A. On, the white dotted line. From that point when we got to the easterly side of Ramirez

2326 canyon we took to what is known as Ramirez mesa. I was not aware at that time that that road had been declared by the court to be a private road; I was not aware of the fact that the road on the beach from Ramirez to Latigo had been decreed and held to be a public road while the one on the mesa was held to be a private road. When we got to the point just above the letter "S" turned on the top of the mesa, just west of Latigo, we found a gate there on
2327 this first trip; it was open when I saw it.

Q. Which did you pass on from that point on to the point on this map (Exhibit 12) just below the words "li" in the word "Malibu," which did you pass on the road in red or the white dots? A. The road indicated in red. I did not find any locked or shut gates when I passed through. They were all open. Our party had been on ahead. The road in red had gates
2328 at either end, two or three gates across it, as we traveled along and it was fenced on the ocean side in places; it was fenced on both sides in some places. At the point below the word "Sosto" there were four gates, two across the road and one at the canyon and one at the beach. Those two gates were closed. The others were open when I passed. It was fenced at that point, and it was so fenced excepting where natural obstructions rendered a fence unnecessary, so that we could not leave without getting off the

2329 road. I remember the strip of road at the mouth of the Corral canyon; over which a bridge had been built at that time; I passed over that. There was a gate at that point. It had been open before I got there. I rather believe that little piece of road was fenced.

Q. Now we come to the third piece of road or the fourth piece of road under the word "Sequit" near the east end of the map indicated in red, the road goes out on here, ending in a
2330 fence, all along the way, wasn't it? A. I think it was. I found the gates open when I traveled it. I did not at any of those points travel on the beach road but I traveled on the roads indicated by the red. They were all new roads. There was some places I had traveled them before, but they were fixed over, where I had driven up on the railroad right of way and on the tracks. All of that was not a part of the
2331 beach road, it was simply the railroad track where the ties laid, excepting those two places where I had been pulling up and driving on the ties of the railroad in high water. I found entirely new roads where the road went over this way (indicating on map, Exhibit 12). I don't know of my own knowledge who built the roads. When I came back from Santa Monica I saw gates along on that line locked. I saw them opened; from Corral canyon to this last section of road, I opened some of them myself with ply-

2332 ers and picks and a cold chisel, in some instances taken off the hinges and in some instances they were cut through with clippers.

Q. Explain why you came back from Santa Monica, going eastward, you didn't travel on the old road, the beach road you were accustomed to, rather than breaking through the gates. A. We had broken the gates once and it was high tide and we did not want to sacrifice
2333 our horses. I had time and time again driven on the beach road when there was no road at this point. It was no greater a sacrifice to drive them there on this occasion than on others. We did not want to sacrifice them any more than we had, so we broke them.

Q. Then, as a matter of fact, the only reason that you had so far as you were concerned for the breaking of the gates on the return trip, was for the personal convenience of yourself
2334 and others, to save the people with horses from putting them to the extra pull; isn't that a fact? A. From Escondido Canyon.

From Escondido Canyon on we broke no gates; what gates we did break we broke for that reason. When we got back to Lechusa we found the Lechusa gate locked. That is the occasion when Mr. Fitzpatrick used his weapon and shot off the lock. He used a rifle. On this occasion I don't know how many of our party had arms; there was two or three that I know

2335 of; I did not. The condition of the bridge when we got back was there was several boards out of the floor and there was a long chain wrapped across the eastern end three or four times, and a padlock. We went down to what used to be the old road where there was a small bridge and took up the floor of the old bridge and carried it up on this bridge to Lechusa canyon. I don't think there were any threats made at that time
2336 with reference to burning the bridge or any part of it. I didn't hear any.

Redirect Examination

By Mr. Burnell:

I am acquainted with that point on the trail leading from Yerba Buena settlement to the road that takes you into Triunfo post-office which has been testified to as too steep for a horse to carry a man over it. That part of the trail is much steeper than any part of the Mon-
2337 dell road.

MARIE LA FOUDE,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I live on section 17 in Ventura county, over the Sycamore canyon in Ventura county. I am in the section here, in this section, the second section in from the ocean and I adjoin the

2338 Broome ranch on the west side. The point that Mr. Anderson and you have marked with the cross and the figure 21 is approximately as near as you can determine from the map, the position of my property. I own besides that, 120 in section 14 that joins Mr. Fitzpatrick. In the section which Mr. Anderson has marked, we have not the title to that but there is 158 and a fraction acres. We are occupying it. There is a little bit but not very much cultivated,
2339 but there is about 20 acres ready to cultivate this fall. I live there. I have five children and take care of three others. I have a husband. He does not reside there on the place. My property adjoins the Fitzpatrick property. (Identified by the cross in green and the numerals 15). My property lies east of his. The location that your pencil now rests on which is to the east of little Sycamore Canyon is about right. (Marked with
2340 a blue cross and the figures 22). That, as far as I know, indicates the position of my other piece of property. In getting into or out of my property I travel up Sycamore Canyon to the head of Mr. Ed. Borcher's place. I have heard the testimony of Mr. Fitzpatrick and Mr. Vennaman.

Q. I will ask you, Mrs. La Foude, if the road that you travel is the trail approximately as described by Mr. Fitzpatrick and Mr. Richter, I believe, and shown by the dotted line—the

2341 curved line running from the heavy dotted line up into Sycamore canyon and thence up Sycamore canyon and then you come to a yellow line, marking part of the road and then follow the heavy dotted line up Sycamore canyon? Is that about the way that you refer to? A. Well, I don't go down that dotted line at all. I go up Sycamore right here where this joins the Serrano Canyon, which is marked on the map. I
2342 start from my place, 21-X, and come down, following the hill right down, approximately west, to the point that is marked by the circle which has a little cross in it, or thereabouts. That takes me to Sycamore canyon. Then I go up to the head of Sycamore Canyon, approximately on the trail described by Mr. Fitzpatrick and Mr. Richter, and marked by the red dashes going up Sycamore Canyon. Then I go through the Borchard place and up to the old highway
2343 to Newberry Park; that is on the new highway.

Q. How do you get to the old highway as shown by the line indicated leading west to the new state highway, indicated by the heavy black line? A. I am not certain of the road, but from Mr. Ed. Borchard's ranch, I come out here, I think, and come back this way, and follow this way (indicating on map); follow the old Conejo road, partly.

Q. I note on the map here, Mrs. La Foude, a road which has not been colored yellow, but

2344 which is indicated by a black line running northerly from the old county highway to a point on the map a little south of the present state highway, at which point it branches, one branch going northeasterly towards Conejo mountains marked on the map, the other going easterly and then northerly, and intersecting the state highway at a point just below the letter "A" in the word "Valley" in the phrase "Conejo Val-
2345 ley." Now, did you take one of those branches? A. Yes; the one that goes up this way (indicating), and from there I travel west; and then I go to Los Angeles or Santa Monica and travel the state highway. To go to Santa Monica, I have never come in excepting on the stage, and I leave the state highway at Cahuenga Pass. The stages run to Los Angeles, but in going up we have to go into the city all the way, using the stage.

2346 Mr. Burnell: Now, gentlemen, I wonder if it is possible to stipulate that the trail or road described by Mrs. La Foude from the Yerba Buena settlement, her place there, up to the point where it runs into the old highway—that her testimony would be the same as that of Fitzpatrick?

Mr. Anderson: Excepting that portion from her place to the point marked circle X.

(Continuing.) The nature of the road or trail beginning from my place at X-21, and just tak-

2347 ing you to Newberry Park, there is a very steep hill on that side of Sycamore, but after we reach Sycamore, it is comparatively level, with the exception of where the waterways are washed, and they are very rough. From my place to the point marked X with the circle around it, it is not a road or a trail either. You just go up any place at Sycamore. There has been wagons taken over it, but I would not ride in them. It
2348 is not a practical wagon road. When I leave my home in Yerba Buena and travel over that way I ride horseback. The road from the point marked by the cross with the circle around it, and from there on up to the head of Sycamore Canyon, is a pretty level road with the exception of the waterways. The water has washed out about a foot and a half to about four feet. Wagons have traveled it part way. It is not a regular wagon road. It is not a road on which
2349 any work appears to have been done, grading or filling in. When we get up to the head of Sycamore Canyon they start up a grade there. At first it is very steep. It is in a small canyon, and after they get to the head of the canyon it is very, very steep. I saw them on the road. My son has tried to take a loaded team over that road. I was with him. He had two horses. He locked the wheels coming down, and going up he came up empty. Coming down he had about 7 or 8 boards on the wagon with him.

2350 about 10 feet long, 1 by 12. We had to lock the wheels even if the wagon was empty. That takes us up to the old state highway. From there across to the new state highway there is a road, a pretty good road, a wagon road. There is another means that I know of by which I can get into or out of my place in the Yerba Buena settlement. I follow a trail over into the Yerba Buena settlement proper, and from there I follow the trail that Mr. Fitzpatrick and Mr.
2351 Richter have described. I have heard the description of the trail; I rode on it once. It took me an hour and a half to ride three-quarters of a mile. My description of the road there in general is the same as the description of Mr. Richter and of Mr. Fitzpatrick. I have not always gone that way. I first came in by the coast road, Malibu Ranch. The last trip I made over that road myself was in April, 1917.
2352 At that time it was open. I have not been over it since. I couldn't get through it because the gates were closed and they didn't allow traveling over it.

Q. Now, at the time you went through this Malibu Ranch, will you please tell us how you came from the Yerba Buena settlement to the end of the Malibu Ranch at the Ventura county line, the point indicated on the map Defendant's Exhibit 6, by the intersection of the red line running along the coast which represents the

2353 proposed new highway and the heavy black line composed of long and short dashes, which line is just to the east of the green line indicating the boundary between the two counties? How did you reach that point from the Yerba Buena settlement proper? A. I came over the Mondell road.

I have heard the description of the witnesses Richter and Fitzpatrick and Vennaman of the Mondell road, and of the road that has been
2354 referred to as running from the county line to the Mondell road at about the point marked 16. That is the road I refer to as the road by which I came to the edge of the Malibu Ranch. I have made four trips over it, round trips over that road. On none of those occasions did I find the road closed. There were never any locked gates over it, except there was at Lachusa a locked gate, which a man came and opened.
2355 On the road outside the Malibu Ranch and lying easterly of the boundary in Ventura county, I never saw a gate, no trouble as far as gates are concerned. Their sheep herder set his dog on me once. That was coming down this road in Ventura county. That was just the act of the sheep herder. That road was used by the public generally and it was an open road, as far as I know.

Mr. Newby: You are speaking now about the road west of the county line?

2356 Mr. Burnell: Yes, the road from the county line west in Ventura county, the Mondell road, and the other road referred to as the Marion Harris-Jasper Thomas road. How far have you got to go to reach the highway or public road at the present time? A. At the present time you have to go fourteen miles to reach the state highway.

Q. What is the nearest point to your place, 2357 referring now to the place marked with the cross and the figure 21, adjoining the Guadalasca Ranch—what is the nearest point to that place to which you can drive a loaded wagon? A. The canyon you mean?

Q. I mean from any point outside, coming from Santa Monica or Los Angeles or Oxnard or any other town. How near to your place can you take a wagon load of merchandise or anything of that sort? A. You couldn't take more 2358 than three or four hundred pounds at any time, and I wouldn't call that a wagon load.

Q. How near can you take your wagon load of three or four hundred pounds? A. To the foot of the hill, by tying the wheels and going down the grade; that is, the point that my son went down with the wagon. To get from the property marked 21-X to my property which is marked 22-X, we follow a crooked horse trail past the corner of Mrs. Rindge's place, and then pass Mr. Richter's place down into the Yerba

2359 Buena Canyon. There is a store at Newberry Park. It is a small grocery store, not carrying a great supply of anything, and no dry goods or hardware can be bought there that I know of. The nearest point at which there is a store at which I can buy dry goods is, I believe, at Camarillo in Ventura county. You can not buy everything at Camarillo. We have to go to Oxnard or Los Angeles.

Cross-Examination

2360 By Mr. Newby:

I went up there to live in August, 1916. I am still living there. When I went in, I went in over the old coast route up over the Mondell road, and then over a trail. In traveling over the Malibu Ranch I used the road indicated by the black dotted lines on the beach, the beach road. I entered the road connecting with the Mondell road at Sequis—we went in over the 2361 beach and then followed the dotted line up to the road marked—we went in off the sand at Sequis. Then we traversed the mesa until we crossed the county line and then into the Mondell road; that was in 1916. I used the road since I have been up there four round trips from my place to Santa Monica and return. I used the same road each time excepting once when I tried to go around Point Dume. That is a straight up and down cliff; it was low tide. It was not possible for me to get around. I climbed

2362 up the west side of the point. I didn't go back to the road, I walked up and down the ravines until we got to the high bridge. I was walking. the wagon was on the road, but I tried to walk around. My boy was driving the wagon. I found it to be impossible for a person on foot to get around Point Dume on the beach at that time. At no other time did I attempt to make a rounding, never attempted it again. The tide was low at that particular time. I didn't at-
2363 tempt it again for the reason that I had never heard there had been any improvements around Point Dume, and having had one experience I did not try the second time.

Q. Now, after you reached the extreme west boundary of the Malibu Ranch on the Ventura-Los Angeles county line, how did you reach the Mondell road? A. All mountain grades are steep to me. I am not accustomed to them.
2364 This was not especially steep, not so much as others. There is another that is steeper, the other side of the Triunfo Pass on the Triunfo trail. A place marked Triunfo Pass on the map (Exhibit 6), going toward the state highway, is very much steeper, steeper tha the Mondell road. The length of the grade about three-quarters of a mile, I think. The length of that on the Mondell grade is about three miles, I should think, the way it is traveled. At no time since going to the Triunfo country did I make

any application for a permit to go through the Malibu Ranch. I don't think I could do it after the gate trouble, although I had nothing to do with that. I never made any application. I assumed that it would not be granted, and I knew I could not break any locks. I never knew that a permit had been granted to anybody. Different parties told me that they had applied and had been refused; among them was Mr. Parks. I did not know that Mr. Vennaman had received a permit; I don't think so. I didn't know that.

Q. You stated upon your direct examination that there was a certain hill beyond which you could not take a wagon, towards your house. Can you locate that hill and give us the distance from your house? A. It is about three-quarters of a mile up the hill from Sycamore Canyon and I live above it. From my house it is northwesterly—my house is at the northeast part of the hill. It is between my house and Sycamore Canyon. That is about three-quarters of a mile from my house, from the top to the bottom of the hill. From my house, coming from either Oxnard or Triunfo or Newberry Park, to take in ordinary supplies, we have to make about three trips with the wagon. From Newberry Park we could take a wagon to the bottom of this hill that I live on. That is about three-quarters of a mile up the hill to my house.

2368 The bottom of the hill from my house is about one-eighth of a mile. I am right on the top of the hill, so that the supplies could be taken to the bottom of the hill and my house is located on the top of the hill; you have to travel three-quarters of a mile. Up to that point at the bottom of the hill an ordinary two-horse wagon could haul, without unloading about 400 pounds. If I started from Newberry Park I can bring
2369 up about 13½ miles to my house and if I start from Newberry Park with 400 pounds I can do it. Going toward my house I could take to this point indicated, as three-quarters of a mile away, 400 pounds. We pack up the rest of the way on horse-back. Work has been done on that road from my house to the bottom. My son, Mr. Fitzpatrick and Howard Plat did that work. The character of the country is such that a road could be built there. Going from
2370 my house toward the Mondell road the character of the country is rough and rocky and there is not so much grade until you come to Richter's place and then it is a short grade. From my house to Richter's is about two miles. The length of that grade is about 25 feet, I think. I don't know the grade for that distance; it is not very steep. It is not a wagon road. There is no wagon road there; I am the only person living up there. From Mr. Richter's going toward the Mondell road is down the hill and up again

and it is not a very long hill. I have traveled both ways to get to the Mondell road. I have gone down the coast and over the Yerba Buena. The distance from my house to the Mondell road, going by way of the Yerba Buena settlement, is about three miles. The general character of the country is hilly, just as I described it; no roads there, just the trail. At the point where I intersect the Mondell road going by way of Yerba Buena settlement, is distant from the beach more than three miles by following the regular Mondell wagon road; that is not quite as steep. I have attempted to carry a wagon-load of merchandise up the Mondell road; I had about 700 pounds. I was able to take up 700 pounds with two horses. Coming down the hill I had to lock the back wheels; I did not drive any load down. I had to lock the wheels, using the brake. With reference to the Mondell road I don't when it was put in. From the Mondell road to my house there is no wagon road. I drove it in from Yerba Buena settlement and then went by trail to my place. From the point where I unloaded to my house is about three miles. That distance I had to pack it. It is about 14 miles from my house to Newberry Park. From my house to Santa Monica by the beach road is 37 miles and by the State Highway 75. I have a daughter living in Santa Monica. I have been to Oxnard; I

went through Topango Canyon and up to Oxnard. I did not go from my house in the mountains to Oxnard. Oxnard is a city of some size, if we could get to it; a lot of stores there. With reference to the waterways which I said at times interrupted us, they are over in Sycamore Canyon. They are up all the time, there has been no work done on them. When the settlers went down there to do some work they notified us that we could not use that road any more. Those waterways were in Sycamore Canyon, they run back and forth from one side to the other. Mr. Reed of the Broome Ranch notified us; so no work has been done on them. He notified us to keep off after April 15, 1917. We have been going out that way but not the way that he would see us. We had to get out some way.

Redirect Examination

By Mr. Burnell:

I moved into Yerba Buena in August, 1916. That is the time I went to live there. Since 1914 I owned that 120 acres. Coming down the Mondell hill I meant by the brake that I would lock the wheels, or you can use a chain. Coming down the hill into Sycamore Canyon the wheels had to be chained, coming into the Broome Ranch.

2377 Friday, October 11, 1918.
10 o'clock a. m.

(Stipulated jury present.)

Mr. Newby: Now, if Your Honor please, we reserved the right to call Mr. Patton. He is now here and he ought to go back to the ranch this morning.

Mr. Burnell: There is no objection to that at all.

2378 J. C. PATTON,

recalled for further

Direct Examination

By Mr. Newby:

I am superintendent of the Malibu Ranch. I have had occasion to observe the different kinds of fences on the Malibu Ranch. At the eastern line of Los Flores Canyon, we have 52 inch net wire. We have one two barbed wire
2379 portion, above that, and other portions only one barbed wire. I believe part of it is only one and part of it is two above the net wire. That is what we call woven wire; we have wire 52 inches high, with two strands of barbed wire at the top; it makes it about 6 feet. And we have, around Malibu camp, three and four wire fences around the fields; around the alfalfa we have woven wire, approximately 27 in., possibly 30 in., with a number of barbed wires, three or four, above that. Around the pasture it is a three

and four wire fence. Most of the wires are three and four, around the barley fields and the open fields, and three and four and sometimes six wires around the various fields for stock. The kind of posts used are most split redwood posts, 4x5, seven feet long. We usually dip them in a coal tar solution, or oil, or something to preserve the part that goes into the ground; about 30 to 36 inches. Above the ground that preparation extends usually six or eight inches. My observation with reference to the barbed wire fences turning stock, and how many wires it takes for that, is that it takes five or six around the field and we have had considerable trouble on this ranch and others where I have been with regard to turning stock from a green pasture into a dry field, it requires not less than five wires well stretched and stays between the posts, and I find on this ranch it is necessary to strengthen the wires all along as the fences are not always sufficient to turn the stock, and we are working on it as fast as we can and rebuilding the fences and putting up better fences. Where there are hogs we have to have different kinds of fence, woven wire net wire fence. It must be high enough—not less than 26 or 30 inches, and if it is that high it must have barbed wire four to five inches above, well stretched. I am familiar with the entire line of this proposed highway through the Malibu Ranch from

2383 east to west. I am also familiar with the road running north and south at Little Alisos Canyon, and the road running to the beach as proposed. Assuming that those roads are constructed in the manner indicated on the map attached to the several complaints, in my opinion, it will be necessary to fence the entire right of way on those roads. It would require a hog fence. At Lechusa Canyon we have a hog
2384 ranch. There is an alfalfa field there and often in the fall of the year we turn the hogs out, and in that case to protect them from the highway there would have to be a hog fence to protect them from the public road. By "hog fence" I mean the kind of fence that I have described with the woven wire at the bottom and at least two strands of barbed wire at the top. The two strands at the top are necessary to turn the cattle and horses; they would have to be suf-
2385 ficient to turn the horses, hogs or cattle, as they all range on that part of the ranch. On the Malibu Ranch at the present time there are something about 1100 sheep. This fence would be necessary also to turn sheep; a hog fence would turn sheep.

By the Court:

They are raised on a particular area of the ranch. In this portion of the country just spoken of. That is usually our sheep ranch at this season of the year, the summer season,

2386 and they are at present right in this neighborhood.

By Mr. Newby:

There are something over 100 cattle at the present time on the ranch and of hogs about between 400 and 500; of horses and mules about 180; something like 180. The hogs at present are around Zuma Canyon, with the exception of a few at Malibu; but this location we have just spoken of is also a hog ranch, and we have

2387 accommodations for hogs at Lachusa.

Mr. Newby: That is all. Of course, Your Honor, we expect to recall Mr. Patton, but on other issues.

Mr. Burnell: We will stipulate that we are not going to object to the recalling of the witness for other purposes.

Cross-Examination

By Mr. Burnell:

2388 The fence at the eastern end of the ranch is described as 52 inches of woven wire netting and barbed wire on top.

Q. Is that fence for the purpose of turning livestock as much as for the purpose of keeping the people out? A. Yes, sir. We have not continued it owing to the lack and scarcity of help. We have not continued it as we intended to, but we have the material.

That fence was built across that end of the ranch some time last summer; I don't know just

2389 the date; possibly in August; some time last summer. We have the material to continue the fence on to the east line, to the northeast corner. The fence at the eastern end of the ranch has been extended beyond the beginning of Las Flores Canyon, possibly a quarter of a mile, a quarter of a mile up Las Flores Canyon from the beach. Beyond the part where the fence terminates, there is no fence at the present time. There are no hogs on the eastern end of the
2390 ranch, and no sheep at present.

Q. Isn't it a fact, Mr. Patton, that the fence at the end of the canyon was not only for the purpose of turning livestock, but also for the purpose of making a barrier to prevent people coming on to the ranch? A. I am not able to say. My instruction was to build the fence, to use it for a winter range for the sheep, and to put up a fence for the stock that would turn
2391 the stock. For what other purpose, I don't know. There is nothing at the present time to prevent the stock going around the end of the fence in Las Flores Canyon and coming out the road there, at the end of the ranch. That fence was built, I believe, in August last year. Previous to that time at the eastern end of the ranch there was an old barbed wire fence, along about the road. I don't know how far it extended. It was not kept up in shape. It was barbed wire on posts, but I don't know how far

it reached. The barbed wires we had before the present woven wire fence were three; two above and one below the woven wire.

Q. I believe you told us that in your opinion the proper fence to turn hogs consisted of woven wire from the height of 26 to 30 inches and then two strands above. A. I stated that that is the kind of fence that we are using, but it is not my idea of what should be used. I do not find that it is successful, because the hogs jump over it, and go between the first barbed wire and the net wire, and we have considerable trouble with them. If it is put up so that the wire is tight it will obviate that while it is new; as the fence gets older it becomes slack; that is true of any fence, that it becomes slack, but a substantial fence of the proper height does not give the gaps and vacancies which a low net wire would; net wire sags down and leaves vacancies between the posts.

Q. Do you mean to tell us that a hog will jump a woven wire fence 26 inches high? A. There is places where the washes come down there and it builds up and it leaves a vacancy between the barbed wire and woven wire and hogs will force their way through it. It would be on account of the action of the elements in building a bridge for the hogs. Some of the hogs we keep at Malibu and some at Zuma at the present time, but at Malibu and Zuma and

2395 Lechusa it is all built for hogs. We keep at Malibu 15 hogs; at Zuma about 420. We do not keep any at Lechusa. At the present time we keep the sheep in the neighborhood of Lechusa but we used to bring them to Malibu in the fall and winter, we did last year and intend to this year. We keep cattle and hogs and sheep on the same portion of the ranch running together; they are at the present time; horses,
2396 sheep and cattle. We keep one herder with the sheep, no herders for the cattle, only line riders. The purpose of the herder is to keep the sheep together and keep them from animals, and we have sheep in the hog pens at Zuma the year around.

Q. You said it was necessary in order to turn the hogs and sheep to have a woven wire fence, with woven wire 6 ft. high? A. No sir, not necessarily, but it makes a more substantial
2397 fence.

Q. I suppose if you had a fence 18 feet high it would be still more substantial? A. I suppose so. My past experience with stock has taught me that you cannot build too good a fence for stock as a cheap inferior fence causes more trouble and damage than the expense of putting up a good fence. As fast as we can, we are building at the present time, on the ranch, good substantial fences which require less attention to turn stock.

2398 I have been in the farming business and incidentally in the business of taking care of cattle and horses also, for a good many years, and under conditions that are similar to those on the Rindge ranch. From my experience in that line, and as a farmer, the type of fence that is usual and customary on cattle ranches and ranches where there are sheep and hogs is a net wire fence. That is the fence that is usually used; it is the most successful fence that is in
2399 use accordingly as the ranch has hogs. But where there are no hogs it is not customary to use woven wire fences to turn cattle. We have used a five wire fence with a post well set and close together with stays between, and that is considered a good stock fence for horses and cattle.

Q. You were asked by counsel a question as to the necessity of fencing both sides of the
2400 road. I want to make sure that I understood your answer. You answered that it would be necessary. I want to find out if your statement that it would be necessary to fence both sides of the road applied to any other road than the road from the main road up Los Alisos canyon and the road leading to the beach? A. Yes sir; it would include all the proposed road.

Q. Now, I will call your attention to a portion of the proposed road that runs from Las Flores canyon very nearly to the beach line as

2401 shown by the map, defendants' exhibit 6, down to a point between Sweetwater and Winter canyon.

Mr. Anderson: That is Malibu point, I think.

Mr. Burnell: I will designate it as a point marked Malibu canyon and a point about half way between where the word "Winter canyon" and the word "Sweetwater canyon" is marked on the map in red. Between that point and Las Flores canyon the road runs very close to the
2402 beach? A. Yes sir; some 200 yards.

Q. Do you think it would be necessary to fence the ocean side of the road there? A. I do.

Q. For what purpose? A. Stock will come down at low tide and there will be nothing to prevent them going to the right of way on the road. We have no cattle at that end at the present time. If our cattle did get down to that
2403 end of the ranch there would be nothing to prevent them going around at low tide, following the high tide lines and around the end of the fence. The portion of that road at the westerly end of the ranch at Nicolas canyon to the Ventura county line runs close along the beach there; from the water line, possibly a hundred yards. I would think there is a necessity for a fence on the ocean side there, as the stock would drift up to the beach and drift on to the highway. There is nothing to prevent cattle

2404 and other stock at the point where the westerly line of the Malibu Ranch at the Ventura county line meets the Pacific ocean, from doing as I said they might do at the easterly end of the ranch, that is, going down on the beach below the mean high tide level and crossing around the western end of the ranch in a westerly direction. Irrespective of fences, it would still be possible for the cattle to get out on the high-
2405 way at either end of the ranch. That would apply to horses, sheep and hogs. There is a portion of the proposed road westerly from Dume Point where the road goes down below the bluff and to the sandy beach, just west of Point Dume. There is no place where it goes very close to the ocean. There is a place where it goes down below the line of the bluff. At that point it is necessary to have a fence on the ocean side, as the stock would drift from other
2406 portions into this vacancy, and they could be led off in other ways.

Q. Wouldn't it be sufficient between the easterly or westerly boundary of the Malibu Ranch and the point where Nicolas Canyon comes down, to have a fence on the northerly side and not on the ocean side? A. That would not prevent the cattle from coming from other pastures here around the beaches. That is the way we drive them at the present time when we move them from place to place. We move

2407 them at the low tide; follow the beach. In my opinion if any part of this road should be left open on the beach side, it would permit stock entering on to the public highway.

Q. Now, at these points, and especially with reference to the last place we referred to, where the road comes down below the bluff, where the road comes right near the ocean, wouldn't the same object be attained—that is, keep the cattle
2408 off the road—if instead of having fences on the ocean side of the road there was a fence extending from that portion of the road which did have a fence on the ocean side right down to the beach, and then a like fence again east? A. It would possibly be all right if there was a rocky point they could not get around.

Q. Such, for instance, as Point Dume? A. Yes, sir.

Q. Now, if there was a fence coming down
2409 to the water and there were gates in that fence along the beach, you could still drive your cattle along the beach, even if this fence extended down to high water, could you? A. Yes, sir; but I find it impossible to extend a fence into the water. High tide will tear it down.

Q. And that impossibility would extend to any fence that would be constructed at the east end, Las Flores Canyon, or at the West Ventura county line? A. Yes sir. In those cases

2410 we have to bring the fence back to a rocky point that they cannot get around.

The woven wire fence that extends for a short distance from the beach at the eastern end of the ranch at Las Flores Canyon, is the only place at this time where we have a woven wire fence 52 inches high and barbed wire on top of that. We have of the fence composed of three or four barbed wires possibly two or three miles. I do not know how long that fence has
2411 been there. It is an old fence. It has been there ever since I have been there. Around the alfalfa field there, we have woven wire 26 inches high. I think that is the height of it; three or four strands of barbed wire above that. Of that fence we have possibly two or three miles; something over three miles I have an idea. Around the barley and beans we have fences four to six strands of barbed wire. How many
2412 miles of that there are would be hard for me to estimate. It continues all the way through the ranch. It runs in and out, and it would be hard for me to determine the distance of it. Taking into consideration all the fences of every kind that we have on the Malibu Ranch, most of them are from four to six wire fences. Of that type of fence, there is, I think, more five wire than there is six wire. I think there is more five than four. The five wire has the greatest mileage on the ranch. I spoke of split redwood

2413 posts. By "redwood" I mean the northern redwood that is shipped here. I also state that we have a great deal of fence that is composed of iron posts, with little short arms or projections on which we put the wire and turn it around to hold it. That is a satisfactory fence, but it is not possible at the present time to get the posts on account of the war. Of that we have possibly four or five miles, five strands of wire.

2414 Q. Now, isn't it a fact, Mr. Patton, that along the side of your alfalfa field where Lachusa Canyon comes down to the ocean, about the place where the so-called beach road is to be put, that the fence around the alfalfa field is composed of barbed wire and iron posts? A. Net wire, barbed wire and iron posts.

The net wire is 26 inches, I think, or possibly 30, four strands of barbed wire, I believe. I am sure about its being woven wire on either side

2415 of the canyon. In the vicinity of Lechusa Canyon we have woven wire around the alfalfa fields. Apart from that we have none. Along the northerly line of the ranch and between the ranch and the property of the persons who use the property to the north, parts of the fence we have newly constructed, a five wire fence through portions of it, and portions is a three wire, the old fence, and there are places that there is 3 and sometimes four. There are places along the northern boundary where there is no

2416 fence. At the head of Escondido canyon, about where Escondido crosses the line, the distance there without any fence is about a half or three-quarters of a mile or maybe a mile. Also along the northerly line, just east of Malibu canyon, we have no fence. From Malibu creek to Los Flores canyon there is no fence at all until you come down Los Flores canyon and strike the end of the woven wire fence. We only keep
2417 stock there with a herder, but in the absence of a herder there is nothing to prevent the cattle going out. Between our property and the Marion Decker place marked X-11 on the map, the sort of a fence we have there is four wire most of the way. Westerly of the boundary of the Malibu Ranch, the kind of a fence is a five wire fence which we are constructing now. Before we began the construction there was none at all, nothing to prevent our animals from go-
2418 ing out the westerly end of the ranch toward the Yerba Buena settlement, except a herder.

Mr. Anderson: Do you refer to the county line end of the ranch? You said the westerly end of the ranch.

Mr. Burnell: Yes.

Mr. Anderson: At that point the county line is the ranch?

Mr. Burnell: The property extending beyond that is not part of the Malibu grant. The one I refer to as the Malibu Ranch—I want it un-

2419 derstood that when I speak of the Malibu Ranch I refer to the area between Las Flores canyon and the Ventura county line bounded on the south by the Pacific ocean and on the north by the broad purple line.

The Court: Referring to the grant.

Mr. Burnell: Yes.

(Continuing). We are not building at the present time any fence along the northerly line
2420 of the ranch. We are going up the county line and we are coming east as fast as we can along the line. It would be necessary to fence both sides of the Los Alisos road because the stock ranges on both sides. The canyon side of that road will not be impassable to stock on account of the steepness below the proposed road. The stock crosses there. I think it would be for cattle. Hogs will go most any place. We do not keep any hogs there at the present time. They
2421 have, but not since I have been on the ranch. There used to be the main headquarters for hogs there. To my personal knowledge they have never kept any hogs or have I seen any hogs kept on that part of the ranch. I have never seen them, but we have pens and accommodations, but owing to the grain I have kept them where the grain is stored. That is down at the mouth of Zuma Canyon. I have never seen any kept, or kept any in the Los Alisos Canyon.

2422 *Redirect Examination*

By Mr. Newby:

We keep stock now on the west side of the proposed Los Alisos road, horses, cattle and sheep. I stated that we had material on hand for building a fence not yet used; 52 inch net wire, barbed wire and posts. We are using that as rapidly as possible and for the building, I think, for something like ten miles more of fence. That was purchased part in December
2423 of last year and part bought the early part of December of last year. When the order was given it was upon my recommendation that they get that kind of material, with the net wire—the net wire was on hand when I came there.

Q. Now, you were asked on cross-examination why it would be necessary to build a fence on the ocean side of the proposed highway at the eastern end and also at the western end. Do
2424 you observe that cattle will wade out into the water around such a fence? A. At low tide they will go around. If you will permit me to explain the way that we overcome those things—

Q. Even at high tide, would the water come up to the right of way? A. No, sir.

Q. I wish you would explain what you mean by that. A. In case the fence comes to a point, where the tide runs low, and there is nothing but sand we usually build a fence back on the

2425 sand to a rocky point, making it impossible for cattle to go around at low tide.

I stated upon my cross-examination that the fence at the eastern end of the canyon went a distance of about a quarter of a mile; the nature of the country at the northern end where it stops is an abrupt bluff that serves as a fence. I was also asked about the territory immediately west of Point Dume. My explanation there is the same as at the eastern end of the ranch
2426 about the necessity of building a fence on the ocean side. My opinion, is that the cross section, if it was built down to the ocean, would not keep the cattle from getting on to the road, unless it was built on a rocky point where it would be impossible for the cattle to come up from the beach.

Q. Knowing the proposed right of way, do you regard that as feasible or practical? A.
2427 No sir, there is no place from beyond the Zuma Canyon up to what we call Steep Hill that would be suitable to build a fence.

I stated that at the present time there was a fence at the extreme western end of the Rindge property, outside, or west of the county line. It is on the Rindge holdings, around and including all land in this portion of the ranch beyond the Ventura county line. It adjoins the Malibu grant line at present, almost to the northwest corner of the county line.

(Witness excused.)

2428 G. E. LEWIS,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I live at Calabasas.

Mr. Burnell: I will state for your information, Mr. Lewis, that this (Exhibit 6) is a photographic reproduction of the United States
2429 geographical map and the state highway is indicated by the dark lines on the top, and the Rindge Malibu Ranch lies within the heavy purple line. The other purple lines on the map indicate lands owned by the Rindge interests, and Calabasas is indicated at two points, one where the old Topanga Canyon road strikes the highway, and the other west of that, and the Russell ranch is here in Russell Valley as indicated on the map. Will you point out where
2430 your property is? A. I am right in along here somewhere. (Indicating on map.)

That is on the state highway. The road runs right through the ranch, on both sides of the highway, and near the point marked "Grape Arbor." I own there 611 acres and a fraction. My business is farmer. I have been in that business all my life. It is safe to say that that covers a period of over 20 years. On our ranch we raise wheat, barley, oats and hay; a few head of cattle. The ranch next to ours is that

of Mr. Agoure. Mr. Agoure adjoins me on the north. Mr. Agoure's ranch is farming, cattle and hogs. The cattle on the Agoure ranch are in the neighborhood of 1000 head. There is a fence between our land and Mr. Agoure's land. At the present time they have put up a hog fence about 2 feet at the bottom and two wires on top, that is, woven wire about 30 inches high, and then two barbed wires on top, redwood posts, all the way from 20 to 30 feet apart, and they put in a picket between the posts. I presume the fence is about 5 feet high. They are split posts. I don't think those posts are dipped in tar or creosote or anything like that. That fence turns the cattle and prevents them from getting from Mr. Agoure's land into ours. In my experience as a rancher, the type of fence I consider a suitable fence for the purpose of turning cattle is three to four wires. It depends on where your fence is. On the back range three wires will do it. Where there is no grain or anything like that. When the object of the fence is not to keep cattle out of a grain field, three will do it. And when there is a crop on the land adjoining, grain or other products are being grown, where that is the situation next to my cattle, then I use four barbed wires and redwood posts, the same as I described before, with pickets between about 30 feet apart—two and three pickets in between.

2434 I have been on the property of the Malibu Ranch. I went through into the ranch house once. That has been about four years ago. The ranch house I mean is down at the Malibu creek. We went over the Nigger Hill and down through that way. We didn't approach the Malibu Ranch house from the west. We came in on the east side. I could hardly tell you by looking at the map how I went to the ranch, but we went right over the Nigger Hill—what we
2435 call the Nigger Hill—and took a trail that went down through the ranch and came in east of the ranch house. That is the Nigger Hill here on the road from Cornell. Then I went a little bit east there. The yellow line on the map that indicates a road or trail is something similar to the direction I travelled. I don't remember what canyon I went down. We followed a ridge and went on down. I can't tell you what place
2436 on the Malibu Ranch it was with relation to Dume Point. I didn't pay any attention. We struck a road that comes in from Santa Monica. We went around the ranch and came in from the east. When we were up on the range we could look right down on the Malibu Ranch. The character of the land is rolling, similar to what we have got in our country. Of course they have more level land in there than we have, but the nature of the whole country there is rolling, rough mountains. Generally I would

say that the land of the Malibu Ranch is the same sort of land that there is on my ranch.

Cross-Examination

By Mr. Newby:

Q. Mr. Lewis, where there are grain fields, and it is necessary to protect the grain fields from the cattle, it requires more wires and a stronger fence, does it not? A. Just cattle alone four wires will turn them.

Q. Read the question. You say four wires will turn them? A. Yes, sir.

Q. That will depend upon how close the posts are together? A. Certainly.

Q. And the care with which the fence is made, is that correct? A. Yes, sir.

Q. Now, where there are hogs, it requires a different kind of fence, does it not? A. Woven wire on the bottom.

Q. And a strand of barbed wire at the top for cattle and horses? A. For the cattle and horses, yes, sir.

Mr. Newby: That is all.

EDWARD W. LEWIS,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

My name is Edward W. Lewis. I live in Los Angeles, 451 Rosemont avenue. My occupa--

2440 tion is assistant to the superintendent of the Broadway Department Store. I own property in the Santa Monica mountains.

Q. Now, you have not been here and I will explain this map (Exhibit 6) briefly to you. This is a photographic reproduction of the United States geological survey map. The section inside the purple line is the Malibu Ranch. The point marked X-3 is the Charlie Decker
2441 place to the north of the Malibu Ranch, and the point marked X-11 is the Marion or Ernest Decker place. The point marked X-5 is the Vaughn place. I will ask you to state whether or not you own any property in the mountains north of the Malibu Ranch? A. I do. It is in 17. It is the east half of the northwest quarter of section 17, and the southwest quarter of the northwest quarter of section 17.

Mr. Vallee: Will you kindly, Mr. Scotton,
2442 place a mark on the map.

(Mr. Scotton marks on map.)

A. It is the old Drake homestead.

The Court: What is the name of the homestead? A. Drake—Wm. Drake. I bought my place from Mr. Drake ten years ago the 15th of this month. He had had it homesteaded 16 years at that time.

Mr. Vallee: Now, I will ask Mr. Scotton what mark he has placed on it.

Mr. Scotton: I have marked Mr. Lewis' place

here with a green cross numbered 23, in the northwest one-quarter of the northwest one-quarter of section 17, township 1 south, range 19 west.

(Continuing.) That is where my place is located. I have 120 acres there. I have owned it 10 years the 15th of this month. I have never lived upon it. I have had occasion in the past to go there many times. I went the coast road over the Malibu Ranch up to the Encinal and over the Marion Decker place and then over the road built by Mr. Drake and from there over to my place. The last time that I went up that way was the year prior to the ruling of the court against the people. I can't state here. I believe the year prior to Judge Bean's ruling against the government and the people—the government case. I have had occasion to go up there since then; I couldn't state how many times, a number of times. I went up the state highway and over the Russell ranch and Mathieson, and up the Meloy Hill and over past Vaughan's and that section. The last time I was in that road was last year. I have had no occasion to go up there since last year. I would have had occasion to go in there oftener than I have done. I would have lived there if I could have. I have had occasion to go in there oftener than I have done.

2446 Mr. Vallee: Why have you not gone in there?

Mr. Anderson: Object to that as immaterial, if the court please.

The Court: Overruled.

(Exception No. 42.)

A. Because it was almost impossible to get in there on the road I had to go since the Malibu road was cut off.

2447 I have had occasion to live there; I have not lived there because I could not get in there. The roads I refer to when I say roads I could not get over are from the Mathieson ranch up the Meloy grade as I call it—I don't know what the name of that canyon is—it is up the Meloy Canyon, up past Vaughan's and on down into the Sequis there. I have traveled over the road from Cornell into Vaughan's a good many times. I never drove that road. I have always

2448 walked it because it was impossible to drive. I would not attempt to drive a team up from the canyon after you leave—going up Nigger Hill I would drive up that hill, but to go down into the next canyon and up in what is called Shirley Slide would be an impossibility; I would not attempt it with any kind of team or vehicle myself. The grade on Nigger Hill is a very steep grade—almost too steep a grade to haul any load to any extent. I should judge portions of it run as high as 33⅓ per cent, maybe 35; and

2449 the other grade from the next canyon up would run possibly 45 in some places. That is what they call Shirley Slide. I have known people to sled stuff up that place, but I have never known anybody to haul a load there. In the past when I have traveled over Malibu Ranch, I have seen portions of a railroad there, partly in operation. I attempted to ride on a sort of hand-car one time. I had walked up as far as the Latigo, and
2450 I saw a young man coming down on a sort of hand-car or car about the size of a hand-car, run, I guess, by gasoline motor. He had a rifle in one hand and was running the car with the other, and stopped there and shot a badger—shot a badger with his left hand and was steering with his right. I told him I had walked all that distance and I would be willing to pay him if he would take me on as far as he could. He said he would be liable to lose his job if he did.
2451 That was the year before the road was closed. I don't know about what year that was; I couldn't state the year. The year before the ruling against the government case. I have been over the road from Mathieson ranch to Vaughan's, by way of Meloy Hill. It is a very steep, winding and dangerous road; it was when I went up there. I have not been up there this year but last year. I consider it a very dangerous road and very steep. I should judge the

2452 grade on the Meloy Hill is about the same as Nigger Hill.

Cross-Examination

By Mr. Anderson:

Q. Mr. Lewis, is that your name? A. Yes, sir.

Q. Did you understand that when Judge Bean granted his decision in the federal case that that closed the road? A. I did.

2453 Q. Didn't you know as a fact that there was still pending the case of the People of the State of California, which kept the roads open by injunction and that that was not decided until the middle of last year? A. I knew that while there was an injunction I was refused admittance through the ranch.

Mr. Vallee: Wait a minute. What is that? A. I say I knew that while there was an injunction on there I was refused admission to

2454 the ranch.

Mr. Anderson: We move to strike that out as not responsive to the question and volunteered by this witness. I asked him a plain question.

The Court: Motion denied.

(Exception No. 43.)

I don't know and didn't know, as a matter of fact that after Judge Bean rendered his decision the state case was still pending and the injunction was still in force and that it was not decided until last year. I stopped my travel because of

2455 Judge Bean's decision, and refusal to allow me to go through the Malibu Ranch. I passed the first gate and was stopped the second gate near the wharf; that was the time—after the injunction had been issued and the ruling had been passed, Judge Bean's ruling. I didn't know there was any other case pending. I did not know anything about the case passed on by Judge Oster. I have not testified in any other
2456 case and I did not know anything about it. I did not testify in the case tried before Judge Bean.

Q. Now you say that you have been many times over the road from Triunfo to the Decker place, or your place? A. What is the Triunfo road?

Q. Have you been over the road from Triunfo post-office, which appears here, on the state highway, with the words "Triunfo" to your place, which I have forgotten the location of.

2457 The Court: X-23.

A. I have been over there a few times.

Q. I thought you said many times. A. That is the Cornell road.

Q. Which did you find the better road? A. I don't think there is much difference. Possibly the one from the Russell ranch is a little better —the Triunfo road. I found the places in the Triunfo road that were the worst almost from the time you start up the grade until you reach the top. That would be from the Mathieson

2458 ranch up past the Meloy place, after I got out of the Mathieson ranch. After you get out of the Mathieson ranch at the Meloy place, you begin to go up the grade, and also in the Mathieson ranch before you get out. I don't know today how much of a road there is that goes over the bad up grade, because I have not been there this year. When I went over, that bad grade was within a radius of two miles, not all straight up, but a portion of it; probably half
2459 of it was bad. After I got to the end of the two miles at that time it was only a trail. That was last year. I would not call it anything but a trail. You could not drive a wagon over it when I was there. The wagon road ended and the trail began about Meloy's place over to the road that passes Vaughn's. There was no wagon road from Meloy's to Vaughn's; I said last year, I think it was, if I remember cor-
2460 rectly, I was up there—I cannot tell you exactly but it was possibly in June or July. I am not certain. I went by Vaughn's place, in getting to my place. I walked all the way from Mathieson's ranch. I got to the Mathieson ranch by automobile. I left it there. We did not travel to the top of the grade. There was a wagon road up the grade. I went no further than the top, that I recall. From there on I walked to Vaughn's. To my place from Vaughn's, I went one way and came back the other. There

2461 is a kind of a road through the hills there and there is a trail leading off over the Decker cornfield and down into the Sequit canyon. I got as far as what is called the Decker cornfield in going from Vaughn's to my place; that is next to Vaughn's ranch, and then there is a trail leading to the head of the Sequit. It is what is called the east fork of Sequit canyon. We always speak of it that way up in the mountains.

2462 Q. I will call your attention to the fact that on this map here, what is called the east fork of the Sequit—that your place is almost at the eastern end of it. Isn't that a fact? A. I don't believe then that my place is marked correctly. I can tell you the section and the legal description if you want it, but for me to absolutely locate it on the map I don't think I could. If you will show me the section line I will try.

2463 Q. This is section 17, this is section 18. Now here is the corner line, see if you can locate it. A. My line lies right in here (indicating on map).

Q. Take the blue pencil and make a circle there. A. Can I divide the section?

Q. Yes. A. My line is right here, from here to here.

Mr. Anderson: The witness has drawn a blue line across the center of section 17 in both directions north and south and east and west. He has then taken the northwest corner of sec-

2464 tion 17 and divided it into four quarters, and three quarters, being the east half of the northwest quarter and the southwest quarter. That is practically where the X-23 is just outside of his property. A. The east fork runs right through my place.

Q. Now, with that understanding I will ask you where, with reference to this east fork of the Sequit, the cornfield of Mr. Decker is lo-
2465 cated, that you walked through? A. It is just above the head of the canyon, right over the top of the hill. It is a trail leading from the cornfield down to the head of the Sequit, that is a trail. Then we came from this direction and then the road to my place would be right here down this way. The road winds around and comes in in this direction (indicating on map, Exhibit 6). It is approximately on the yellow line—starting at Vaughan's place, and following
2466 the yellow line back to my place, the one that makes the elbow. It is a fair wagon road. After it leaves Vaughan's place, it was headed for Cornell, originally, off down the hill. It is the road that runs almost east from Vaughan's. When I was there about a year ago last June, there was no road from Vaughan's place northerly toward Triunfo post-office at all. When I traveled through the Malibu, I went through very frequently. I visited my place sometimes once a week and sometimes once a month. I

2467 did not visit it as often in the winter as in the summer. In the winter season I visited it about once a month. Assuming that the point where the words "Las Flores Canyon" occurs is the eastern boundary of the ranch, the route I took through was following the road right through until you come to the rocks where we went down into the water. I don't know where that was. It is a place where we had to drive down into
2468 the sand, and wait for the tide. I couldn't tell you for how long a distance I had to drive along the sand. I have been over there many times. I should judge the distance was something like a mile and a half that I drove on the sand, as far as Latigo Canyon. I drove from where I went on the sand at the rocks to Ramirez, and then turned up over the point and went across where the dotted line is, practically (on Exhibit 6) and I think from the point of rocks
2469 where I went on the sand is about a mile and a half or two miles. After I got across Point Dume, I remember a big canyon, Zuma, or Dume. After we got past that the road I took was according to who happened to be there. If Mrs. Rindge was there I had to drive on the sand. If she was not there, they would allow me to go over the mesa. I knew that that road was a private road. My understanding was that the road which I used when Mrs. Rindge was there was not a private road, it was under

2470 a court order. When I went there when she was not home, they would say, "All right, the old lady is not here, go on." That is the very words they used.

Q. You did drive over the private road when she was not there? A. I don't know that she was not there, I was told she was not.

After I got across the mesa, I turned up Encinal Canyon, over the Marion Decker place. That is the road that goes up the hog back,
2471 quite a steep road. I think in some parts it must have been 33⅓ per cent. grade, not as bad as the Meloy grade, not as steep, I think. I said the Meloy was about 33⅓; it was not a very good road. During that period I did not undertake to farm my land nor to get stuff in and out; I was not ready to go on it yet. Ten years I owned it at the present time. There is no house on it. I sold the forty with the house. I
2472 didn't build the house, it was built before I bought it. Mr. Drake told me that he had homesteaded it 16 years. He was on it when I bought it. He told me that he had been living there during the 16 years. So far as I am concerned, during the time I had the use of the beach road, I did not undertake to cultivate any portion of it or take anything in or out.

2473 *Redirect Examination*

By Mr. Vallee:

During the time prior to this ruling that I traveled over the Malibu Ranch, I didn't improve my place because it was almost impossible to get to it with anything worth while; I could not see any chance to do anything until we got a good road.

By Mr. Anderson:

2474 I knew the road conditions when I bought the place.

MRS. JENNIE PARKES,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live in the Sequis Canyon. My place is in section 13.

2475 The Court: You better have Mr. Scotton indicate the section line.

Mr. Scotton: This is the corner of section 13, the southeast corner. The location of Sequit Canyon on this section is a little farther west, and if Mrs. Parks owns the quarter, or the east one-half of the east one-half of 13, as she has indicated, it would be just about in here where she has shown. I will mark that 24 in red.

2476 By Mr. Vallee:

That is where my property is located. We have 160 homestead, and 80 acres that we bought; 240 altogether. That is just one-quarter of a mile north of the Rindge line. I have a family, a husband and two children. We have lived up there 14 months. We never lived there before that. We owned the property six months prior to that time. I have traveled down over
2477 the Rindge ranch going to and from our property four times. The last time was in June, 1917. When we first moved up to our property no families were living in the Sequit Canyon north of the Malibu Ranch. Since the Malibu Ranch was closed, we have traveled from Triunfo over what is known as the Decker road. We would use a horse and wagon—a team and wagon, not all the way; up to what is known as Mr. Smashey's house. From there we unloaded
2478 and packed on to the horse and pack down. We carry in weight from Triunfo over to Mr. Smashey's place about 500 pounds.

Cross-Examination

By Mr. Newby:

Mr. Smashey's house is about two miles from our house. There is no road from our house to Mr. Smashey's, nothing but a horse trail. There was no road leading from our house to any other place. We are in a virgin country. We went there about a year ago. The char-

2479 acter of country between our place and Mr. Smashey's is very hilly. There are persons living in there; Mr. Kappler and some more live between us and Mr. Smashey.

The Court: Who besides Mr. Kappler? A. Mr. Malden.

By Mr. Newby:

From our house to the Malibu road we go up out of the Sequit and hit the Mondell road and
2480 go down that way. The four times that I traveled when I was going in, I would go over the Mondell road and then east to our house, and then in going out the four times that I have mentioned, I would go west until I struck the Mondell road and then south, and then east to Santa Monica. The distance from our house to the point where we intersect the Mondell road is just three-quarters of a mile. There is no road between our house and the Mondell road,
2481 only a trail.

CHARLES A. FOOSE,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

My name is Charles A. Foose. I live at 5923 Towne avenue. My business or occupation is painting contractor. I have property located in the Santa Monica mountains. My place is

2482 the southwest one-quarter of the southwest quarter of section 21, the west one-half of the southwest one-quarter of section 21, and lot 2, section 28.

Mr. Scotton: Marked by a green cross No. 25 in the southwest quarter of the southwest quarter of section 21, township one south, range 19 west.

By Mr. Vallee:

2483 That description, with the description I have given, is where my property is located. I own there 159⅝ acres. I have lived upon the property. I can't tell exactly the date I filed on it; it was in the summer of 1911. I went to live on there and started to build my house in December, 1911. I lived there until June 26th, I think, in 1913. I have a family, a wife and two children. At that time I had a little over 25 acres under cultivation, as near as I could measure it.

2484 Of the approximately 160 acres on my land I could get about 60 acres capable of cultivation and that can be cultivated—between 60 and 65 acres. At the time I was living there I went to and from my property from the outside country through the Malibu Ranch, until I left there in 1913. I was up to my property in 1914. I went across the Malibu Ranch in 1914. In 1915 I went across the Malibu. The last time I went across the Malibu was in 1915, in August or September. I have been into my prop-

erty since then. I went around by Triunfo. First before I went to Triunfo I went to Cornell and over. There was no Triunfo then that I know of. To get to Cornell we would go in through the Russell ranch at a point on the highway, and go towards the ocean to Russell's house and turn a little to the left there and go through a gate and down through the river bottom, and down to Cornell. Now we go in at the same gate off the highway, known as Triunfo, over the same route down to the Russell ranch, but instead of going to the left we turn to the right around the Russell barn and to a gate in through the Mathieson place. We go from there down along the Mathieson ranch to a gate in a small canyon, turning up towards the little lake. Without describing it in detail, it is generally down to Vaughn's place. The last three or four times in there I was in with a machine, a Ford. I had to use chains on my wheels, with cross sections, all crossed with chains, and had to take the cap off of the gasoline tank and bore a hole in it and put a tube in it and an air valve and put the foot pump on and pump air into it to get gasoline to continue on. They are Weed chains, only in between the sections on the Weed chains, when you buy them, I had to put on other cross chains, to get them over the tread, to get traction to go up. The automobile that I described is the one that Ernest Decker de-

2488 scribed as having pulled out. I know Mr. Auld; I have seen his automobile. Instead of having pneumatic tires he had his filled with a composition to keep from puncturing them, and had his machine fixed the same as I—or rather I got my idea from him so I could get mine up. His wheels are covered with chains. The machine would not have gone up there if it was not fixed that way; it didn't go up then. I had
2489 to let everybody out and push on the back of it. I would live there at the present time if I had a better means of getting in in either direction, either through the Malibu or from Triunfo.

Mr. Vallee: Now, I assume that Mr. Anderson will probably stipulate that this witness will describe the road from Triunfo in through the Mathieson ranch to the Vaughn place and also the road from Triunfo to Cornell about in the same manner as it was described by witness
2490 Ernest Decker.

Mr. Anderson: Yes. By that we mean that I might myself wish to ask him one or two questions.

Mr. Vallee: Oh, yes. We will not limit you on any cross-examination on that phase of the matter.

Cross-Examination

By Mr. Anderson:

I never tried to get to my place over the Malibu with a machine. I went up the Malibu one time to the Corral canyon to see some folks.

Q. But you could not get up through any of those canyons with a machine, could you? A. I never had a chance to try; I wouldn't say for certain.

I have been over the road. I used, going to my place, the Marion Decker road up that hog back. I couldn't state whether I could take a machine up there or not. If the road would not be washed out with ruts I could get up with the Ford under the same conditions that I went over the Meloy hill. It was usually washed out and rutted, at some places, but the grade on the Marion Decker grade, while it is steep, they are not long. They are short and flat that you could stop on, and then short ones on up like that, and so around the side hill, where the Meloy grade is absolutely almost a straight pull going up; there is no winding around on level places; it is steep. I consider the Meloy hill from the bottom to the top a mile or a little better. The Encinal canyon hill from the bottom to the top we always figured that around the road it was about a mile and a half, but on a direct air line down it is one mile. The road itself—well, about a mile. It takes an hour and a half to drive it.

2494 I am thirty-nine. My occupation is painter. I have followed that since 1893. I take contract work on my own hook. My earning capacity during the past year per month on an average has been about $3.50 a day; when I was working as a journeyman, three and a half to four dollars. I have not averaged my earnings during the past year per month, either by the day or as an independent contractor. I have an idea,
2495 $4.00 a day throughout the year. On the 25 acres that was cultivated, I had barley, wheat and garden truck, and corn. I last cultivated it in 1913. The amount of the crop of barley, as near as I can tell, was about 7 acres, I didn't cut it in front of my house, but there was 10 acres and I cut about 3 acres of that, and I weighed them and it averaged up that there was 9 tons on the 3 acres, of barley hay to be threshed; it was not threshed. I raised a crop
2496 of oats the year before that on the same piece of land, as near as I can tell, I got about 4½ tons; I didn't thresh it, I fed it. I have never raised a crop that I threshed, either wheat, barley or oats. I have sold produce from that ranch; I sold 27 sacks of potatoes in the spring of 1912, to the neighbors. I did not take them out. I brought them out for my own use, about five sacks. I have never marketed anything excepting which I might sell in the neighborhood. Those potatoes were the only thing I sold.

2497 I did not consume on the place whatever else I raised. The stock we got in there consumed it. My place had a fence around it but one field of barley was eaten off by the Malibu cattle. It was the Malibu fence which was down. The posts were burned off and the wire down for two miles. That was in 1912. Other years the Malibu cattle did not get into my place. The Mathieson cattle came over. They
2498 turned them loose in there purposely to improve their own ranch. There was no fence in there at that time. The cattle could not help from coming there. I did not have any fence around that side, only around the ten acres. They didn't break that fence. They didn't get in there. It was on the outside pieces. With the exception of the potatoes that is all that I attempted to market.

Redirect Examination

2499 By Mr. Vallee:

I had a two wire fence. There were cattle around there. They did not get into the ten acres.

SIDNEY M. MALDEN,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live just above Nicolas flat in the Santa Monica mountains; business, ranching.

2500 Q. Now, if you will step down to the map (Exhibit 6) I will explain it briefly so that you can locate your place. The purple line upon the map, which is photographic reproduction of the United States geological survey map, includes the Malibu Ranch. The canyon you see marked Nicolas canyon is Nicholas. The part marked in purple to the north of the Malibu Ranch is a piece of property owned by the Rindge Com-
2501 pany. The line marked in green is the line between Ventura county and Los Angeles county. The black line, with the arrow on it is the Sequit Canyon, the east fork being marked "east fork." The point X-3 is Charlie Decker's place; the point X-5 is the Vaughn place. Now can you tell us where your property is located? A. I have two quarters on the southeast running west and two quarters running north on the northwest.

2502 Mr. Vallee: Can you locate that for us, Mr. Scotton?

Mr. Scotton: I have marked the location of Mr. Malden's place with a green cross No. 26, in the northeast one-quarter of the southwest one-quarter, section 18, township 1 south, range 19 west.

By Mr. Vallee:

That is where my property is located, part of it. I have there 160 acres. I have in cultivation about 5 acres. I have cattle. As to how

2503 many head, I would have to look up on the books. Mrs. Kappler's cattle and mine are running together; I have approximately about 6 or 7 head. I have a son; he is there with me.

Mr. Vallee: Now, Mr. Anderson, if you will stipulate that Mr. Malden will testify substantially the same as Mrs. Kappler as to his means of ingress and egress—

Mr. Anderson: Yes.

2504 Mr. Vallee: And the condition of the road?

Mr. Anderson: Yes.

MRS. C. M. DECKER,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I live in the Santa Monica mountains in section 20. I am married. My husband's name is
2505 Mr. Charles Decker, whose place has been identified as in section 20, with the cross and the mark 3. We own 160 acres in 20. We own 160 acres in 16. On the south line there are two forties and one adjoining 15 and one on the north adjoining 9 and one forty in 9. 9 is over just above 16. One forty in 9 and one adjoining it in 16, two on the southern extremity of 16 near the center, with two adjoining the center, and one adjoining 15 in 16.

2506 Q. I will ask you to step down and indicate as closely as you can, and ask Mr. Scotton if he will kindly assist us. If you will indicate by a cross the property that the Deckers own in section 9 and 16, and in the other sections as well as in section 20, that will assist us very much.

Mr. Burnell: I will ask you, Mr. Scotton, what you have marked on the map?

2507 Mr. Scotton: A 40 acre piece in section 9, and a 40 acre piece in the northwest one-quarter of section 16. Those are two pieces adjoining and have been marked with a green cross No. 27. A 40 acre piece in the southeast one-quarter of the northeast one-quarter of section 16, marked with a green X No. 28, and two 40 acre pieces in the south one-half of the south one-half of section 16, marked with a green cross No. 29, all those pieces being in township I

2508 south, range 19 west.

By Mr. Burnell:

360 acres altogether are owned by myself and husband, and those are comprised within the various parcels I have just pointed out. On the homestead we have about 18 acres in cultivation. We raise on that corn and barley, principally. We have an orchard and a vineyard set out at the home place, in 16, and the adjoining 9, that is in beans, I imagine about 15 acres, in beans this year. We have no more cultivated land at

2509 the present time. The land that we raise the corn on is some on the home place, in 20. There is a part of the land known as the Decker cornfield, but that is where we have the beans. We have had it planted to corn. It is where the bean field now is. We have lived there seven years, continuously. I have a husband and six children. I had known the country before we moved there over 20 years, we have had our homestead that long. We have lived there continuously
2510 for the last seven years. We have tried living there at various times before that, but we have lived there continuously for the last seven years. We went back July 14th, 1911.

Mr. Burnell: Now, I will ask you gentlemen if you will stipulate that Mrs. Decker's testimony with regard to the various roads and trails leading down to Triunfo by way of Meloy Hill, to Cornell, and the other roads in the vicinity
2511 will be the same as the testimony of Mr. Foose and Mr. Decker and the other witnesses living on that Decker plateau?

Mr. Anderson: With the same limitation that we may cross-examine her.

(Continuing.) In addition to the road and trails leading from our neighborhood down to Triunfo post-office and to Cornell, there are no other roads or trails that we use in getting into or out of our property, other than through the Malibu. We formerly went through the Malibu;

2512 we ceased going through the Malibu two years ago, I believe, simply because the roads were closed and it was difficult to get down that way. Prior to the roads being closed through the Malibu we had traveled in and out of Triunfo. Before the roads through the Malibu were closed the Malibu Ranch road was the most frequently traveled. That was our usual means of getting in. Since that was closed, we have
2513 gone the road to Triunfo. The Malibu road we found the easiest. We have made the trip to Santa Monica in four hours by the Malibu road; it takes us three hours to go to Triunfo, and then from there I don't know how many hours it would take. We have never driven that with the team. At Triunfo we take the stage. I have traveled through the Malibu Ranch going to or coming from our place more than twenty times. On those trips I never
2514 stopped at the Rindge house and Mrs. Rindge never served me any meals, nor did she ever make up any beds for me.

Q. Did you ever steal any of the property on the Rindge Ranch?

Mr. Anderson: We will stipulate to Mrs. Decker the same as the others.

Mr. Burnell: That she has never stolen any property?

Mr. Anderson: That she would so testify.

2515 Mr. Burnell: Or burned any buildings, or shot any cattle or set fire to any crops or anything else?

Mr. Anderson: Yes.

Mr. Burnell: All right.

I know the Meloy hill. We have all worked on that road a little bit. The work was done by people that helped on it. I don't know whether the county has done any work on that hill or not.
2516 I don't think so. In that neighborhood work was done by the settlers. Mr. Meloy made the road by the little lake. That is, his men made the road. Within the last year, I do not know of any work being done on the Meloy hill or that vicinity. From the Meloy place over my husband worked on it. That was done after the rains this last year—this year, that is, after the rains of the winter of 1917-18. Before that work was done the road was impassable. The
2517 county did that road work from the Meloy place to the Vaughn place, I believe. Before the work was done, as I have just testified, it had been a trail. I never went over it prior to that work being done, with a wagon; we packed our beans out horseback last winter on that trail, 25 sacks. They averaged over 80 pounds the sack. We packed them to the Meloy place and then we hauled them in a wagon down to the highway and they were taken by trucks to Albert Cohn's store, to Los Angeles, and we sold them to Al-

2518 bert Cohn. There is no other method by which we can take out our produce to market, that I know of.

Cross-Examination

By Mr. Anderson:

The first time I traveled from Triunfo to our place by the northerly roads was 1914 or maybe 1915. We packed horseback from the Meloy place over. At that time the Malibu roads were not closed.

2519 Q. As a matter of fact, hadn't the Malibu roads, particularly the roads east of Ramirez and along the beach, become so much washed out by rains and waves and floods generally that they were almost unusable? A. Well, the beach was always bad, and we were compelled to use the beach.

That was the road it was agreed by Judge Oster we could use. During this period of 1914,

2520 in and about that time, 1914, and 1915, in fact until we quit using the road, I think they got worse and worse along the beach, so bad that they were practically impassable at points. We have used that Triunfo road or the road from Cornell with a wagon, clear to the Charley Decker place, our home. The first time I believe was along these same dates I have given you, 1914 or 1915; I don't remember those things. I recall the fact that about the 4th of July of 1914 there was a large meeting of the

2521 neighborhood up there at Cornell. There were two meetings held that year; both meetings held for the purpose of raising funds to work those roads. Mr. George A. Fremlin and I were the publicity committee, I believe. At those meetings there was a subscription started for the construction and improvement of the roads in that neighborhood; it wasn't finished because we decided we couldn't do anything about improving those roads amongst ourselves; it was
2522 out of the question. I know of no work done on those roads before that time by anyone, before those meetings. Assuming that the meeting I have particular reference to was July 4th, 1914, I don't know as to whether any work was done on any of those roads between that and the end of the year. My husband worked on the road at one time, but I don't remember the date. When we were holding meetings we could get
2523 a wagon over the road as far as our house, but no loads either way. We first got a wagon with a load over either of those roads directly after that; I believe we hauled about 200 pounds home that way. There was not much difference in the grade of the road at the time that we were hauling the 200 pounds in than when we went in with empty wagons; the gullys had been filled up and things like that. We got the first load over this Cornell road, that is the one that has Nigger Hill. We tried using the Cornell, about

2524 a year. We made over it during that year in the neighborhood of four or five trips as near as I can remember. During that year we made over the Malibu perhaps three or four. After we ceased trying to use the Cornell road we used the Triunfo road. We first got a wagon load over the Triunfo road not until this last year; I believe it was in November, as near as I can remember, November, 1917. We hauled our
2525 loads to Meloy's place and packed in on horseback, between 1914 and 1917. We went to the beach a few times. Excepting that, our more frequent method was to haul to Meloy hill and pack in. This last year, in November, we finally got a road we could get through with a wagon. I have known of a few automobiles coming through. The county automobiles came to our place. There was a Ford came in this year; they were from Long Beach; no more came to
2526 our place in this year. I have seen automobiles on that road at the Vaughn place, two. One was Mr. Shoemaker's and a Ford belonging to Mr. Joy. Those are all of the autos I have seen on that road. The kind of an outfit I was traveling with when I made a trip from our place at the top of the mountain near the head of Encinal Canyon down to Santa Monica in four hours was a light spring wagon and a two-horse team. I made that trip several times in four hours. I don't remember the date of the last

2527 one. It was as far back as 1914, and prior to that; within the neighborhood of five or six years ago. Before we went to the mountains we have lived in Santa Monica and Los Angeles both. We went out about seven years ago. At that time we knew there was litigation pending over the road and that the road was kept open by reason of injunction.

Redirect Examination

2528 By Mr. Burnell:

I do not know of any automobiles coming to our place at any time before the work was done on the Meloy grade and on the road to Triunfo this year. That work was done from the top of the grade to Vaughn's place. The Ford machine came in by its own power; it got out by a team of mules. That was because of the grades; they used the team of mules and the engine also. We used to try to use the Cornell 2529 road in 1915 because the beach road was so bad, and we were not allowed to use the dirt road. There was a dirt road through there; they compelled us to go on the beach. In attempting to use the Cornell road in 1915, after leaving the Vaughan place, we came to the Shirley Slide; it is practically a drop off the mountain; we got up and down on that by tying the wheels and putting on the brakes; then after reaching the bottom of this hill, which I believe is over a half mile in length, some of

2530 the grades, one in particular, you climb 16 feet in going 20 feet. Then after getting over the Shirley Hill, we go through the canyon and up the stream bed for half a mile and then we proceed to climb out of the canyon. This next grade is, I imagine, over a mile and a half long, from the Roller place to the summit. Then we go down into the old Coulter place and I think it is over a quarter of a mile long, and nearly a half a mile, to this, then we go along on a
2531 road that is practically level and then a grade out of that place and down into the Burley place, and then over a rolling country for perhaps three-quarters of a mile and another down grade into the old Shipman place, and there the road is good for half a mile and then out the Smith homestead and there we had a slight grade, to the top of Nigger Hill. I don't believe it is necessary to give any more description than
2532 what has been given before. It is a very steep long grade. There were other places besides this Shirley Slide where we had to lock the wheels; we had to lock the wheels on all these grades, but we didn't always tie them. By locking the wheels, I mean applying the brakes. We tied the wheels on the Shirley Hill going down the hill; coming up you can't pull 200 pounds up there. To get to Shirley Slide with your wagon you drive your team up. We have unloaded at the foot of this hill and come back for various

2533 loads, when we had more than 100 or 200 pounds in the wagon. You could take up 200 pounds if you had a good team.

WALTER KIELHOFER,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live right at the head of the east fork of
2534 the Sequis Canyon. I have 160 acres there.

(Mr. Scotton marks on map.)

Mr. Scotton: I indicated the house of Mr. Kielhofer with a green cross and marked it No. 30 in the northwest one-quarter of the northwest one-quarter of section 9, township one, south, range 19 west.

By Mr. Vallee: That is where my place is located. My wife lives there most of the time.
2535 I am up town working. I have lived there off and on for probably a week at a time or a month. I was out there a couple of weeks ago for a week. The first time I went out there to live was not quite a year. I went out there and put the house up. I am familiar with the Santa Monica mountains north of our place toward Triunfo and Cornell; I climbed out of them all the way off and on to find a way of getting out and in. I have carried mail up in that country from Owensmouth to Triunfo and from

2536 Triunfo to Cornell. In carrying mail from Triunfo to Cornell I went over the road known as the Cornell road. That is the yellow line indicated upon the map (Exhibit 6) from Triunfo post-office down to its intersection with that other yellow line under the letter "S-S" in the words "Russell Valley," and on in a general southeasterly direction to Cornell.

Mr. Vallee: Now, before I ask the witness
2537 the next question, I will ask you if you will stipulate that Mr. Keilhofer would testify similar to the other witnesses with reference to the road from his place to Cornell, and from his place over the old Decker road to Triunfo?

Mr. Anderson: I will just ask him this question: have you traveled all those roads? A. Yes, sir. Well, I have not traveled the Nigger Hill road.

Mr. Vallee: You have never traveled that?
2538 A. No, sir.

Mr. Anderson: If you will specify, I think I want to interrogate him.

The Court: You had better interrogate him.

Mr. Vallee: You say you traveled from Vaughn's place, X-5. I will ask you if you have traveled over the road from Vaughn's place to Triunfo? A. Yes, sir.

Mr. Anderson: We will make the same stipulation as to this witness that we did to Mrs. Decker.

2539 Mr. Vallee: That will be satisfactory.

The Witness: The last time I traveled over the road from Triunfo to Cornell, I think, was in May, this year. I carried mail from Triunfo to Cornell for about seven weeks, April and May of this year. From Triunfo post-office to Russell's office is a good road, just dirt road. You go through a gate there and turn to the left and go through the alfalfa field, where it
2540 is rough in places and there are about five or six gates to go through before you hit the creek. You go through the creek. If you don't go a certain way you will get into the quicksand to the left. When I was going through there the water was pretty high and it was right after the heavy rains. Then you go about, I should judge, 150 feet to the creek. You have to take the water most of the time, or did at that time. Then you raise out and get away from where
2541 the water had washed it away, in places about five feet high. It had cut it down. You come down a little plateau and hit some rocks east, by the water still in the creek. Then you go into the creek again and there are two roads to take. One is a steep short hill, and another to the left of the creek, and under some trees where the water had washed through a big rut in places. Then you hit another steep hill with some rocks in it. Then you have a good road to a place called Isenprice, a hermit who lives

there, and then a steep hill goes down to the creek. There was two big ruts in that where the water had washed. You strike some bad places. The water is about 3½ feet deep, but not so wide as at Russell. There is some more sand to pull, and then another hill to get up, and you have good road until you hit the Grant gate and go through into the Grant, and then the road was fair for quite a distance, and you have to go through to the creek again. The hill was not so steep there, but there is sand to go through. Then the road is fair for a ways; then there is another steep hill. I remember one big rock right in the middle of it. Then you have the choice of another way to turn, either to the right or to the left. The left one takes you through to the creek, which I judge is the best way to take. To the right you go over the side of the hill where it has been cut out, and there is some rocks. At that time there was a spring or rather some seepage right in the middle of the road. To the left it goes down steep into the creek, and there is considerable sand. You have to go through the water on both sides. Then you have to climb the bank again. You go a short distance on fairly good road and then you have to go through the creek again, about the same description, sand, and so forth. Then you come to a kind of open country where another canyon runs in. Then you

cross another creek, which runs into that. I don't know what that canyon is called, but then there is some people living there by the name of—they live farther up in the canyon. I kind of forget their names. Then you go a short distance and hit where the old post-office used to be; it ain't Cornell yet, but it used to be the old Cornell postoffice. The road is fairly good all through there, but not to Cornell; you get to a school house, and the road crosses the creek, and I don't know where it goes to, and then to the right it is fairly good for a ways until you hit another creek where it is steep, and there there was a great big rock. There was no sand in that creek. Then you cross another creek a little farther up. Just before you get to Cornell you have got another creek to cross, and there is still another creek to cross, but that creek is kind of bridged and fixed up. That is right in Cornell; then you get to Cornell. I went over that road almost every day. The longest hill is right there at Russell's where you go down into the creek the first time. That grade there was about 500 yards long. I saw four automobiles on that road the first week, stuck right there at Russell's in the sand, and Russell's horses pulled them out. They were going to Cornell. Russell pulled them out, back to the ranch. He pulled them out of the sand and back up the hill, and from there they went

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on their own power. They didn't go any farther towards Cornell.

Cross-Examination

By Mr. Newby:

It is a good road from Triunfo as far as Russell's office there right near the gate, the building, the main building. These autos that I saw stuck were in the sand; the first one I saw was a Chevrolet and had a trailer. That stuck right in the creek. There was no grade in the creek. It was right in the creek; it sunk right down into the creek. I guess it is more rocks than sand. It was not caused by the steepness of the grade but by the sand and water there. There had been a heavy rain about a few weeks previous. I have not been over that road on other occasions when there was no difficulty in getting over. This was not the only auto I ever saw up there; there was two others I remember seeing there, and there was one Ford I helped pull out myself. I drove a horse and wagon; I had a light wagon and a horse. Sometimes I used just the horse. There is no stage to Cornell. I have the only stage; that is, if somebody wanted to go I took them along. The sand was in the creek, but the loose sand was more to the side of it. The high water no doubt had washed over it. I don't know if it was brought down by the high water. I supposed it had been brought down by the creek. The creek runs the

2551 whole year around. At that time, that part, the creek runs the whole year around. I have not been across it at all seasons of the year; I have been told that by the homesteaders that live there. I don't know it of my own knowledge. They are people living on that road; there is three that I know of. Mr. Isenprice is located about half way to Cornell, and there is another fellow right above him by the name of
2552 Howard. I used to leave mail at Isenprice's and I left mail there to Dixon's. That is the name I tried to think of. And also another man that lives in that canyon that comes down into that Triunfo Creek. And I left also mail a little further up just beyond the school house at Mr.— I can't think of his name now. He lived back farther down the canyon somewhere. I don't know just where. I never was up there. I also carried mail for the Decker plateau to Triunfo.
2553 Triunfo was the post-office for the Decker people. When I went to my place, I went over the Meloy grade. That is the Decker road. I built my house about a year ago, I think it was in December, 1917. At that time I built 10 x 14. Then I built an addition to it. Mr. Stout hauled the lumber in, up the Meloy grade as far as Kelso's, and there I carried it in myself on my back, about 2 miles on the trail. No wagon road from there to my place. From the Decker's I am about two miles—the Decker road, north-

2554 west of the Decker road. The lumber was a portable house. It was hauled by the Oxnard Express to Triunfo. Then from there Mr. Stout hauled it to Little Lake and then made five trips to Kelsoes with the rest of it. Kelsoes is just about a mile—no, it ain't a mile—northwest from the Decker road. There is this road that joins below Vaughan's, the road which we use—I can show you on the map.

2555 (The witness indicated a point on Exhibit 6 already marked X-27.) I think that that is the house. There is no road from my house to Kelsoes. They are building on that road now. Whenever I get time, I work on it. It is capable of construction. It is along the side of the hill. The bench mark, the elevation near my house, is about 1800 feet, according to the contour of the map. The locked mail sack I carried did not have so very much in it, all the way

2556 through, but I took up considerable parcel post; sometimes as high as 200 pounds. I averaged daily around 100 pounds, I should judge. I had difficulty in traveling with my rig from Triunfo to Cornell; the horses had a good pull; I made it in an hour and three-quarters, something like that. The distance is 5½ or 5¾ miles. I had a light rig. Sometimes went horseback. Horseback I made no quicker time, just about the same time. It took me all day to carry the mail from Owensmouth. I had a machine to Tri-

2557 unfo and from there I had a horse and wagon. I would not use my machine through that canyon. I used a machine to Triunfo and then took the wagon to Cornell. I ran the horse most of the way, too, to make good time.

Redirect Examination

By Mr. Vallee:

I say it took Mr. Stout five days to pack in this portable house from Little Lake to Kelso's house, the same road that he had taken from
2558 Triunfo to Little Lake. One trip each day, which included provisions, some lumber and other things I had, furniture and things of that kind and the house. He didn't take it all in one load. He took several loads to the foot of the Little Lake, from there he would just take about 500 pounds and go over the grade to Kelso's. I don't know how many trips he made from Triunfo to Little Lake. He made it in one day.
2559 That is all level road.

MRS. C. M. DECKER

recalled.

Direct Examination

resumed.

By Mr. Burnell:

I know where the railroad tracks are that run through part of the Malibu Ranch. I have seen a flat car being operated over that route, what would be called a hand car. I asked for permission to ride once. We were coming with a

heavy load up the beach, about $15, I should judge, in November. I saw at the time Mr. Decker and a child. The baby was 14 months old. I was walking along the railroad at this point because the water was dashing against the wagon where we were driving on the beach, and the men came on the hand car, and I asked permission to ride to Zuma to get the baby out of the storm. It was raining and it was cold. They told me they hated to pass me up but that it would cost them their jobs if they took anybody to Zuma. At that time I was ready, and able and willing to pay a reasonable fare. None of them asked me for any fare. I asked permission to ride to get the baby out of the storm, and they told me they could not take me, that it would cost them their jobs if they did.

H. L. COMLY,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live at Los Angeles; I am deputy county surveyor and have been such five years.

Mr. Anderson: So far as the qualifications of Mr. Comly, I think we can stipulate to the formal qualifications. By that I mean to say that I wish to ask him something about this particular matter.

Mr. Vallee: That will be agreeable.

2563 Mr. Anderson: We may want to question him about specific matters he testifies to.

The Court: You stipulate that he is a qualified surveyor and civil engineer?

Mr. Anderson: Yes.

Mr. Vallee: Now, we have a large map here, Mr. Anderson, which is the same map as is attached to the complaint and is the Plaintiff's Exhibit "A" attached to the complaint.

2564 Mr. Anderson: The same map?

Mr. Vallee: It is the same map exactly, but it is in better shape so we will be able to place it upon the blackboard with the understanding that your previous objection is made to the court at the beginning and the court instructing the jury that the particular legends upon the map are not evidence. I presume counsel will stipulate that this is the first section of the map attached to the complaint to be marked as plain-
2565 tiff's exhibit.

Mr. Anderson: Of course I have not examined it but we will so stipulate.

Mr. Vallee: If you desire a copy I can furnish you with a copy but I think you have one. (This map is included in the exhibits to be certified up).

By Mr. Vallee:

(Witness, continuing): The survey was made for the proposed right of way through the Malibu Ranch on the so-called Malibu road in

2566 the main case from March to July, 1915. I had charge of the party making the survey. Mr. Bowlus, the locating engineer, laid the road out, the right of way, upon the property and actually located the right of way as surveyed. Mr. Bowlus and myself went over the entire location together and marked all the lines on the ground before the survey was run. The survey was run in the same location as the road was located before the survey.

2567 Q. Now will you start at the eastern end of the ranch at Las Flores canyon and take the right of way from the beginning and tell the jury why the road was placed in that particular place and where the parcels appear on the side of the road, why those parcels were placed there.

A. Beginning at the easterly boundary of the Malibu Ranch at Las Flores canyon we have a strip 40 feet wide, which is the general

2568 strip, and the parcels on each side to accommodate cuts and fills.

Q. Now, Mr. Anderson has called my attention to a matter that I should probably go into first before you start to describe the right of way.

(Continuing). The scale of the map is 10 feet to the inch. The red portions indicate the proposed right of way forty feet wide, and the strips in red along the forty foot strip in red are the parcels of land supposed to be taken in

2569 this suit. The words on the map "center line of railroad right of way as per deed No. 6216," that is the center line of the railroad right of way that now exists upon the Malibu Ranch. That center line is one long dash and a short dash and a long and short dash, alternating all the way through the map.

Q. Now, I observe the words "county road declared a public highway by board of supervisors February 2nd, 1916" a strip appearing to
2570 be strip between two lines which are made up of long dashes, that is the road over which dedication there was a resolution introduced in evidence—is that right, Mr. Anderson?

Mr. Anderson: Yes, that is 20 feet in width.

By Mr. Vallee:

(Continuing). The lines there mark approximately high tide lines; that is, the approximate high tide lines. And the legend "Pacific Ocean,"
2571 that indicates the Pacific ocean. The approximate high tide line is the long black line appearing under the strip in red, and the other lines —dash lines—appearing below the line of the approximate high tide indicates waves; water lines.

Q. Now, Mr. Comly, just start with your description. A. At the easterly end of the ranch across the bridge at the Las Flores Canyon, the center line to a point about 325 feet from the beginning, we are at a point 50 feet from the

2572 center line of the railroad. From there on we follow parallel with the railroad until we get to Carbon canyon or Coal canyon, and there we swing southerly around a high point of hills for a distance of about 500 feet to another point. At that point where I say you swing south, the roadbed or the proposed right of way, is approximately, from the mean high tide line, 150 feet. That particular place was selected because it
2573 was the best location for the road, good grade, flat, easy of construction. To the north of the proposed right of way along that stretch is the railroad right of way. To the north of the railroad right of way are hills, right down to the proposed right of way. The hills at that point are 80 to 100 feet high. Starting at the point where I say the proposed right of way turns south, we swing around the foot of a high bluff at Coal or Carbon Canyon, passing the bluff
2574 and coming back to the point which is 70 feet south of the center line of the railroad right of way. On the side of the 40 foot red strip there are some further red strips; they were put in to take care of a cut and fill at that point which would be necessary. Then we go parallel with the railroad up to a point about 100 feet east of Sweetwater Wash or Canyon. On that strip the proposed right of way from the ocean is 200 to 300 feet. The railroad right of way lies north of it; the hills lie to the north of the rail-

road right of way, 80 to 100 feet high. The right of way was placed in that particular location along that particular strip because it was the most economical place to build a road. The road could not be placed any closer to the ocean. Then we swing near to the railroad past the warehouse and cross it at about 150 feet west of the warehouse, as shown on that map. The proposed right of way does not take any of the warehouse. It comes to 30 feet of the warehouse. The railroad right of way lies to the north of the proposed right of way and upon the rails. Just before you reach the rails, a square mark, marked "shed" is upon the map. That is the watchman's house, I believe; about half of it is on the proposed right of way. That is what appears to be marked "House" on the map. The square marked "shed" on the map is the engine house for the railroad. The right of way does not take any of that. Another square on the map south of the warehouse, which is designated as "Loading Platform," is the loading platform for the warehouse, or the railroad, at that point. The proposed right of way takes about three feet of that on the south side. At that point the proposed right of way cuts across the right of way of the railroad. The distance from the eastern point where the proposed road right of way crosses the right of way to the western point where it crosses fur-

2578 thest westerly—the distance from the eastern point where the proposed road starts to cross the railroad right of way to where the proposed road right of way finally leaves the railroad right of way is 1170 feet. The proposed right of way is 300 feet from the ocean at the warehouse point. The right of way could not have been located at any point there without having to cross the railroad right of way, because on
2579 the south side of the railroad right of way there is drift sand all along, from the warehouse west around the point; at a point about 600 feet west of the warehouse, we are on the north side of the railroad right of way at the foot of the slope, and we follow along to the foot of the slope until we get around to the gate leading up to the Malibu Ranch house and then from that starting point we have portions on the side to take care of the cuts and fills, the cuts on the
2580 north and the fills on the south side. It would not have been practicable to have constructed the road there at that point without having to take these parcels for cuts and fills, on account of the grades and the contour of the hill. From the gate, from the road leading from the ranch house we run north about 400 feet, to just before we come to the point of the hill, sticking out to the east of Malibu Creek, just south of the hill we cross Malibu Creek in a westerly direction to a point just south of the gate on the

2581 road, the present road, leading across Malibu flat. Where the proposed right of way crosses Malibu Creek the road has red strips on the outside of the main right of way; those were for fills at that point. It was not practicable to have placed the road at that point without making those fills. We had to have dirt. There is a fill on each side leading to a bridge. That would have to be protected. From that point, the road goes about half a mile or a little less
2582 in a straight line towards Malibu flat, to the north end of Malibu Lake. That is a strip 40 feet wide all the way through. From there it goes in a southwesterly direction to a point where the Winter Canyon wash crosses the present road on the north side of the railroad right of way. The particular route was selected going north from the east side of Malibu Creek and then west, instead of going directly across
2583 Malibu Creek and Malibu Lake to Winter Canyon, because at Malibu Creek, at the railroad bridge, it is much wider than it is lower down, and there is no natural protection to the road from the north. At Malibu Lake it would be necessary to build a bridge. If we had gone directly west, it would have been necessary to have crossed Malibu Lake. The proposed right of way, as laid out, does not cross Malibu Lake. From Winter Canyon the road goes in a southwesterly direction along the foot of a hill over

2584 the present traveled road. At a distance of about 1000 feet we leave the present road and swing more northerly along the foot and side of the bluff until we reach a spot a distance from Winter Canyon of about a half a mile. From the point after you cross Malibu Creek the proposed right of way does not follow the present traveled road to Winter Canyon. The proposed right of way at points between Malibu Creek and the point which I have described on the
2585 map, about a half a mile west of Winter Canyon is on the present road, at the north end of Malibu Lake and between Winter Canyon and a point about a half a mile west. That is from the point north of the Malibu Lake to a point upon the map marked 214.53. The exact parts where the proposed right of way covers the present road are from Station 180 plus 50, the present road is within the proposed right of way.
2586 From Station 194 to Station 202 plus 50 the present road is within the right of way of the proposed road.

Mr. Anderson: Between now and Monday the witness Comly might tabulate those roads and show the places he is being asked about.

The Court: That is a good suggestion. Can you do that, Mr. Comly? A. Yes, I can.

By Mr. Vallee:

From a point west of Winter's canyon "par cels" on each side of the forty foot strip marked

in red are for cuts and fills. Crossing Winter Canyon there would be a fill. The portion on the north side would take care of the slope and the fill on the south side. From Station 197 westerly the parcels on the north side are for cuts. And from Station 197 on the south side going westerly they are fills. It was necessary to make cuts and fills at that particular place, as the road was located on a side hill. I could not have located the road at the bottom of the hill because of the railroad right of way and it would have necessitated another crossing of the railroad. Station 217 plus 80, approximately, we come onto the mesa, and we follow along the southerly portion of the mesa to a wash at Station 227 plus 50, approximately. At station 218 plus 64 on the south side of the right of way there is a twenty foot parcel to take in a fill. There is a low place beside the road. Beginning at 203 plus 25 on the north side of the road there is a parcel to take care of the cuts until we get to station 218 plus 00, necessitated by side hills. At station 204 and station 205 plus 55 there is a parcel, a cut and fill. The fill is for broken ground. At station 206 plus 75 and station 210 plus 90 there is a parcel to accommodate a fill, for broken ground. At station 213 plus 50 and station 217 plus 50 there is a parcel to accommodate a fill due to broken ground to the south. From station 219 plus 93.13—I will correct that.

2590 From station 220 plus 00 the road is 40 feet wide until we reach station 225 plus 00. On the north side is a borrow going beyond the length of this map. On the north side of the road part of it is to accommodate cuts and part fills. On the south side from station 227 to station 228 there is a portion to accommodate a fill. From a point where the road here of the proposed right of way leaves the railroad right of way, just west of the center of the canyon,
2591 the right of way goes on rolling, hilly country. The proposed right of way leads to the beach at about the point designated west of Winter canyon. From the beach at Winter Canyon, it is 400 feet; from the beach at Dry rock 1000 feet. This particular route was selected instead of following along close to the present right of way of the railroad because along the beach there that is bluff, or soft material, and it will fall whenever
2592 it becomes wet in the rainy season and causes slides and would cover the road up the first rainy season. We left that condition back where we first left the railroad west of Winter canyon, to avoid that condition.

2593 Monday, October 14, 1918.

CELIA GLEASON,

called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live in the city. I am librarian of the County Free Library. The County Free Library has a branch in the Santa Monica mountains at the
2594 Decker school house, near Decker's place. That branch library has been there I think about a year. I have only been up there once and that was when it was established. I think that was about a year ago. To get to the library at that time I had to go up through the Russell ranch over the trail. I tried to get permission to go by the coast. I applied for permission to Mr. Scotton. I had a conversation with him in regard to giving me permission to go through on that
2595 road. I asked permission to go and he refused.

Mr. Anderson: I move that that be stricken out as not responsive to the question. The question calls for a yes or no answer.

The Court: Can you answer that question? A. As to whether I had the conversation?

The Court: Yes. A. I did have a conversation.

Mr. Vallee: What was the conversation? A. In regard to giving me permission to go through on that road.

2596 Q. Will you tell, as nearly as you can, what you said and what he said? A. I beg your pardon. I asked permission to go and he refused.

Q. Anything else said? A. Yes, we talked considerably about it. I simply couldn't remember the exact words. I didn't go through the ranch that way. In this conversation that I had in which I say I don't remember what was said
2597 I did tell him that I was the county free librarian. On that trip by way of Triunfo we went in the machine to the Russell ranch and the Decker people met us with horses. We placed the bundles of books, and there being no horse to ride I walked in from the Russell ranch to the Decker school house. I should have gone since. I haven't gone because it takes too much time to go that way. To walk from Russell ranch to Decker's place, I think it took me about
2598 four hours; something over.

Cross-Examination.

We have records which show when we established that branch library. I can send that down to Mr. Burnell or Mr. Vallee. With reference to that trip, that was when the library was established. It was several months before that I had my conversation with Mr. Scotton, because I rather objected to going over the long trail. I didn't go out for several months after I had my conversation with Mr. Scotton, but I became

thoroughly conversant with the situation and how I would have to go and come, before I went. After making that investigation and familiarizing myself with conditions, I went, nevertheless. I walked going and coming. The reason why I walked on the return was that the horses were engaged, as far as I know. The horses that carried the books up when I walked up were engaged when I started back. There was no method that I know of that could be accorded me by any of those settlers in the way of a horse to come out. I don't know whether there was or not. I did not request a horse. There was none to ride out, because those that came down were needed. They sent down as many horses as they could. I didn't go any farther than that. The horses were needed for other work. Naturally I would not ask them to come down. I found out they were needed for other work because it was very evident. I didn't ask for a horse.

Q. Now, do you know as a fact that you could have gone in and out of that community within the last year in a wagon? A. Well, as I remember the road, I don't think I want to. I would not want to ride over it in a wagon. I have not heard that it has been improved. I don't know from my own experience whether there is a perfectly good road where I can ride in a wagon to that ranch. I have heard that it has been improved since I have had my exper-

2602 ience. I don't know to what extent, only by hearsay.

Q. If you had gone through the Malibu Ranch, did you expect to walk that way? A. I understood there was to be a mile and a half of trail if I went the other way. If I went the coast line there would be a mile and a half; if I went the Russell ranch there was something like eight miles. Either way I would have to walk some distance.

2603 I had heard that I could get up to the Decker road on the Malibu Ranch. I will furnish Mr. Burnell the date that I got there finally. It was several months after I had asked for permission. I didn't ask him again after that first interview.

Redirect Examination

By Mr. Vallee:

I waited the time I did after that interview

2604 with Mr. Scotton before I went up the first time because of the difficulty of the trip and the length of time it would take to go.

W. O. LOWE,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Vallee:

I live in Los Angeles. My occupation is assistant superintendent of schools of Los Angeles

2605 county. There is a school district to the north of the Malibu mountains called the Decker district. There is a school house there. I can not tell you exactly when that school district was established; it was established before I came into the office and that has been seven years and it was before that. I think at the present time there are thirteen children in that district; I understand so. I do not know how long the school house has been constructed. It was constructed
2606 when I came in. I have made several trips to the school house in the last six years. I think during 1917 I went by Triunfo and through the Russell ranch on horseback, across the mountains to the Decker ranch. For the first three years I went up the coast through the Rindge ranch. I went from the Rindge ranch up to the school house, following the coast line to Corral Canyon past the point of rocks and on the sand
2607 and then further up until we got to what is called the Rindge ranch, about 25 miles north of Santa Monica and then there was a strip of sand again I should judge 2 to 4 miles and instead of going across the point with the road we had to go around on the sand that far and then from there went up the canyon and over the road, the old Decker road, to the Decker place. During the year 1917 I went to the school house in November, I think. I did not go up there during the year 1917 prior to November. The

2608 school usually began in September and we went up in the early fall or late spring. When I went in through Triunfo, I went through the Russell ranch and over the road where it passes a lake, over the trail, the trail that leads clear across Decker's. There is a ranch we passed there, the Mathieson ranch. My means of conveyance was horseback. I never went in with a wagon with a horse, always went on horseback and
2609 walked part of the way, from a mile to two miles; about a mile. It seemed to agree with me to walk part of the way. It was rather a hard ride over the steep mountains, especially one steep grade. The school house is a small one room building, about, I should judge, perhaps 15 by 16 or 18 feet.

Cross-Examination

By Mr. Anderson:

I can furnish Mr. Burnell the number of trips
2610 made in 1917. I did not at any time during the year 1917 make a trip up the beach road. Of children in attendance at that school in 1917, there were, I think, ten enrolled; perhaps an average daily attendance of eight or nine. The school teacher herself, last year, 1917, had two or three. The present school teacher has two. They are a part of the enrolled scholarship. Of those children there are three of the Decker children, perhaps, this year; there was five at one time. I think there are three of school age,

2611 the others were post graduates. This is located on the Charley Decker place. He let them have the land for the school house. A census of the district has not been taken for several years; that has been done away with. Fifteen children are required to establish a school house of that kind and in order to maintain it they must have five and a fraction. There must be more than five.

2612 Mr. Vallee: I have here a statement from Miss Gleason as to when the Decker branch of the County Free Library was opened.

Mr. Anderson: June 23rd, 1917. We will accept that statement and stipulate that she would so testify.

H. I. COMLLY,

a witness on behalf of plaintiff, recalled:

Direct Examination Resumed

2613 By Mr. Vallee:

At this point the witness was taken in detail over the entire right of way of the proposed road in the Main Road case, as such proposed right of way is shown upon the map placed upon the blackboard, such map being a duplicate of the map accompanying the complaint in said Main Road case as "Exhibit A" thereof. He testified in much detail, but in substance as follows:

That the proposed forty-foot right of way strip for said road throughout, and each part thereof, was and is located on the ground at the most feasible place in all instances, expense of construction, grades, and all other elements and surrounding conditions being considered;

That it would not be feasible, and in many instances it would not be possible, to change the selected, surveyed and proposed route or any part of it;

That said forty-foot strip right of way was and is located throughout in a manner which will be most compatible with the greatest public good, and the least private injury;

That each of the separate parcels sought to be condemned in said Main Road case is necessary to be taken in aid of the proper construction and maintenance of the proposed road, either for the purpose of a cut or a fill or both or some other essential use or purpose necessary to the proper construction or maintenance of said proposed Main Road; that unless each of them is condemned and taken the said road could not be properly constructed and maintained; and that each of said parcels is located in a manner most compatible with the greatest public good and the least private injury;

That all of this is true throughout the entire length of said proposed right of way for said Main Road, commencing at Los Flores Canyon

2617 at the southeasterly end of the same, and ending at the Ventura county line, which is the northwesterly end of the same, and traversing the entire length of that portion of the Malibu Ranch situated in the county of Los Angeles, including the part of said ranch belonging to the defendant May K. Rindge and the part thereof belonging to the defendant Rindge Company. The testimony of the witness in these regards was accompanied by many and elaborate reasons
2618 given by him in support of his opinions.

The witness testified that he doesn't know at what point there is a 12 inch pipe line after you cross Zuma canyon. We have it marked here a ten inch pipe line. That there is a bridge at the point where the proposed right of way crosses that pipe line. That he didn't think that the bridge was over all of the places where the pipe line is located. That about thirty feet of it is
2619 not covered by the bridge, as shown on the map. That all of this pipe line is under the ground at the present time he thinks but he doesn't know. That where it is not under the ground it is held up by being suspended on a wire or post, something like that. I don't recall exactly what it is. That this map doesn't show the construction of the bridges, or what is supposed to be for the bridges. That shows on the profiles. After the proposed right of way crosses the canyon, Dume Canyon, there appears on the

2620 map three concrete standpipes. There are two of them entirely within the proposed right of way, and one about half. That if he remembers right the pipe that feeds these concrete standpipes was a 20 or 24 inch concrete pipe. That he doesn't recall how far below the pipe is below the top of the ground. That to the north of the proposed right of way where the concrete standpipes are there is a hill that goes up to the mesa.
2621 That the matters which he took into consideration in locating the proposed right of way at that particular point were that he tried to get as far as we could from the north line. That they got to the foot of the hill and decided that that was the best location for it, at the bottom of the hill. That if they had located the proposed right of way further north on the hill or against the hill, it would have cost a good deal more for grading. That it would have cost a good deal
2622 more to place it on the side of the hill than it was to take the standpipes as they did.

That at the time they made their survey there was no road from Nicholas Canyon west until they came to the west side of Arroyo Sequit. From there on the road coincides with what the witness calls the proposed highway proposed by the board of supervisors. That from the west side of the Arroyo Sequit to the Ventura county line it coincides with what appears on this map

as proposed public highway by board of supervisors February 2, 1916.

That wherever possible and practical the proposed road was located so as to avoid the taking of trees or improvements, and so as not to interfere with watering places for cattle, and so as not to interfere with property that was or could be used for cultivation. That the matters taken into consideration in locating the proposed road from the eastern to the western end of the ranch were damages to the property, uniform grades, cost of construction, length of road, permanence, cost of maintenance, drainage, its present and future use, what would likely be hauled over it, and whether it was to be a through road or not. That where it was necessary to cross cultivated land, or land that could be cultivated, the road was located so as to leave as large pieces of land on either side as possible, and that wherever possible all of the land that was or could be cultivated was left on one side of the road. That the highest percentage of grade along the main road at any point was 6.5%. What the average grade is, is pretty hard to say. That he had not figured it out. That, in his opinion as a civil engineer and surveyor, the road is located in the location where it will be the least expensive to build, and that it is located where it will be the least expensive to maintain. That it is located where it

2626 will do the least damage to private property. That it is located where it will be the most permanent. That he means when he said he took into consideration the matter of drainage, that between Los Flores and the county line the road crosses a great many drainage areas and canyons. The drainage areas have to be taken into consideration. That with reference to the drainage areas, they had to locate the grades high enough to get in culverts and bridges and other
2627 drainage necessities.

The witness also testified to the same substance and effect, and with like detail, concerning the proposed forty-foot strip right of way for the proposed so-called Alisos Canyon road and the various parcels sought to be condemned in connection therewith; also that the highest percentage of grade on the Alisos Canyon road is fourteen per cent., and the average grade
2628 about eight per cent.

That the Los Alisos canyon road crosses Los Alisos Canyon once from its starting point at the main road to the north line of the Rindge Ranch. That it is in the bottom of the canyon. It crosses the creek once before it comes to the Rindge property line. After that it comes back again.

The Court: It terminates on the same side of the canyon that it begins on?

Mr. Anderson: Well, it crosses twice.

The Court: It all depends on what you mean

2629 by twice. It crosses from the east to the west and then comes back to the east again? A. Yes, north of the Rindge line.

The Court: North of the ranch line? A. Yes.

Q. By Mr. Vallee: Keeping inside of the Rindge Ranch, does the Los Alisos Canyon road terminate at the north Rindge line on the east side or west side of Los Alisos Canyon? A. On the west side of the creek and the bottom of Los
2630 Alisos Canyon.

Q. On the west side of the creek? A. Yes. It begins on the east side.

Cross-Examination

By Mr. Anderson:

On cross-examination, by Mr. Anderson, this witness testified in substance as follows:

That when he surveyed the proposed Main Road (from which survey map "Exhibit A" of
2631 the complaint was made) there was only one traveled road on the Malibu Ranch at its northwesterly end at the Ventura county line within five hundred feet of the ocean; that the nearest road there to the proposed right of way is the road indicated on the map "Exhibit A" as having been declared by the board of supervisors of Los Angeles county to be a public highway (all parties to these suits stipulating that it is not a public highway, and never became such), which road crosses the Ventura county line

2632 about four hundred feet north of the proposed right of way sought to be condemned for said Main Road in the Main Road Case; and that this is the nearest road of any kind to the said proposed right of way; and that such was the case when the said survey was made by the witness;

He also testified that the effect of building the proposed new Main Road and fencing it
2633 would be to wipe out as a road in some places the present private road upon the Malibu Ranch and now traveled through the Malibu Ranch from Los Flores Canyon to the Ventura county line, and to destroy it so far as its usefulness as a road is concerned.

The remainder of this witness's testimony upon Mr. Anderson's cross-examination related to the location of the proposed Main Road and the reasons for selecting the particular route
2634 surveyed and depicted upon said "Exhibit A"; and does not differ in substance from his testimony in that behalf on direct examination.

The witness was then further cross-examined by

Mr. Newby:

On this further cross-examination he continued his testimony concerning the location and routes of the proposed Main and Alisos Canyon roads, and his testimony in these regards did not differ materially in substance or effect from

2635 that given by him on the same subjects on his direct examination.

Q. By Mr. Newby: Don't you recall that it would have been entirely feasible from an engineering standpoint to come down the east side of the canyon, skirted the forest to the south and then struck this point without touching a single tree or anything but land? A. I don't think it would be possible.

2636 Q. But by that, you would have avoided these trees, and the irrigation standpipes? A. Yes, but we would have had to add to and make a more expensive road.

Q. Now, is that simply an opinion of yours or absolute calculation from a survey of the two locations? A. It is after a careful examination.

Q. What other engineering obstacles were there from continuing this road from Solstice
2637 Canyon in a general westerly direction along the territory there south of this proposed highway to Ramirez Canyon? A. Right west of Solstice Canyon there is a bluff about 300 feet high, very hard rock, that when it becomes soaked with water seems to have some action the same as the slaking of lime, and causes the cliff to fall off in large chunks. At the foot of this high bluff is a railroad right of way, and a track so close to the foot of this bluff that if we caused

2638 the location of a road along there, it would necessarily be within the limits of that bluff.

Q. How far west from Solstice Canyon does that 300 foot bluff reach? A. It commences about 100 feet west of Solstice Canyon and reaches to within about—about 1500 feet of bluff.

Q. Extending towards the west? A. Yes, sir.

"Q. What other engineering difficulties were
2639 there, other than the bluffs mentioned at a point 1500 feet west of Solstice? A. We have the same condition as in all other canyons, the control of water. Coming down, underneath that railroad right of way, and just west of there there is a place which is called a cienega, where the seepage water—there is a continual seepage of water on a sort of a sea mud, in formation, and that lies in a half moon shape, and is con-
2640 tinually sliding toward the ocean. It is at that little lake; there is a small lake west of Latigo Canyon."

"Q. Did you notice that the hill had sloughed off at the railroad? A. The whole hillside is gradually settling.

Q. Did you notice whether or not it had interferred with the railroad right of way? A. Some parts of the railroad are destroyed.

Q. At what particular point where the cie-

2641 nega is? A. It is carrying the railroad with it. This whole basin in here is moving.

Q. What is the length of that particular district affected by this sliding movement? A. About six or seven hundred feet along the shore line."

"Q. I notice there is a place here marked Marsh Land. Do you know whether there is a spring adjacent to the highway at that point? A. Just north of it.

2642 Q. What is the size of that spring? A. It is a very small spring. There was very little water coming out of it when we were there.

Q. Is it sufficient to water stock? A. I wouldn't say so, no.

Q. How far north of the highway is the place that you just referred to as little water running out? A. About 100 feet, as I remember it.

2643 The Court: At what station is that? A. That is about station 87 of division 2.

Mr. Newby: Has subsequent reflection, since 1906, caused you to change your opinion as to whether or not it would be entirely feasible to have kept this proposed highway on the south slope of the hillside from Solstice Canyon to Ramirez Canyon? A. Has my opinion changed?

Q. Are you now of the same opinion, that this is located in a better place than if it was kept on the south slope of the hill? A. Yes.

2644 Q. You see no reason to change your opinion on that? A. No."

"Redirect Examination

By Mr. Burnell:

The witness testified that on cross-examination he was asked as to the location of the road existing on the ranch in connection with the proposed road, and that he testified that in certain places portions of the present road would be
2645 crossed and taken by the new road. That the crossing or the taking of these portions of the present road would not prevent the use of the remaining portions of that road in connection with and as a part of the new road. That the present road, the one that the court and jury traveled over to inspect the premises, extends from one end of the Malibu Ranch at Las Flores Canyon to the other end at the Ventura County line; and that it bisects the ranch into portions
2646 north and south. That the present road which the court and jury traveled over to inspect the premises crosses cultivated land. He observed land in actual cultivation, lying to the north and some to the south of the present road. That the present road goes through cultivated land in certain portions of the Rindge Ranch which the new road will leave by going up through the hills, as, for instance, where it goes around Latigo and Escondido Canyons. That the present road is so constructed that the grades going down into

2647 and out of the canyons were, in his opinion, as an engineer, that it is not a practical road for the purpose of ordinary public travel. That the location of the proposed road that the county is seeking to acquire by condemnation eliminates that condition at those canyons of the sharp turns and steep grades down through the canyon and a sharp turn at the bottom and the steep grade coming out the other side, and the
2648 sharp turns, to a great extent."

"That it would be possible for the owners of the Rindge ranch to use this old road that is now used, provided this proposed highway is condemned and fenced on either side, by having gates at all these intersections if they felt that it was necessary."

"Q. Have you examined and familiarized yourself with the condition of the railroad tracks on the right of way through the Malibu?
2649 A. Yes.

Q. What in general is the condition of that right of way? A. It has had a great deal of it destroyed.

Q. Now can you tell me, from your observation and study what was the cause of the destruction? A. Some of it was due to the action of the sea, some of it was due to washes at the canyon, and some of it was due to slides.

Q. Now I will ask you if you have located the proposed canyon road alongside of the right

2650 of way of the railroad, whether or not in your opinion those same conditions you have described as having injured the railroad, would have affected the county road? A. It would.

Q. What would be the effect? A. The road would be destroyed, the same as the railroad.

Q. Was that taken into consideration in that location? A. Yes.

Q. Now, in planning your bridges, culverts and pipes, did you or did you not allow for a
2651 factor of safety in figuring the water space and capacity for each culvert and pipe? A. Yes.

Q. In every instance? A. Yes.

Q. I suppose by that you mean that you made them large enough to take care of more water than you believed from your examination and study of the conditions and drainage area, the size of the channel and the other factors would actually be presented for drainage? A.
2652 Yes."

"Q. Regarding the location of the railroad right of way, do you say that that was or was not a good practical location for a railroad? A. Did I say it was or was not?

Q. Yes; would you say it was or was not a practical location? A. It was not.

Q. Why not? A. Because it is almost entirely destroyed at the present time by the elements."

2653 "Q. Explain what you mean by 'clearance.' Is it distance between the bottom of the highway and the bottom of the creek? A. Bottom of the bridge and the bottom of the creek."

He further testified on this cross-examination:

That a bridge across the Malibu Creek (near the mouth of the Malibu Canyon) was provided for in the county's road plans, being a 600 foot pile trestle bridge—a combination bridge with
2654 seven or nine thirty-eight foot spaces or spans, trusses, with fourteen nineteen-foot trestle spans, with a height of twelve feet above the surface of the earth, upon driven piles placed at right angles to the flow of the stream, which was a proper and sufficient bridge for the purposes in connection with the construction of said Main Road for which it was designed.

Certain profiles made in connection with the
2655 survey of the said proposed right of way in the Main Road Case were then produced by the witness (and subsequently introduced in evidence as appears hereafter), and, testifying from them on further cross-examination, he described and testified to the following bridges provided by the plans for the construction of said proposed Main Road, each of which he testified was necessary and each of which, he also testified, was properly planned for the purpose for which it was designed:

2656 At Corral Canyon: A bridge consisting of one standard fifty-foot wooden deck truss, four standard nineteen-foot trestle spans, two concrete piers under the fifty-foot deck truss, and two wooden piers set in concrete; wooden bulkheads and wings, with posts set in concrete, the entire length 126 feet, and highest point above the bottom of the canyon thirty-six feet, with a clearance of 28 feet.

2657 At Carbon Canyon: A trestle bridge, 38 feet long, and ten feet in the clear above the creek bottom;

At Los Flores Canyon: The westerly end of a forty-foot trestle bridge, its greatest clearance being nine feet;

At Solstice Canyon: A trestle bridge, 138 feet long, with a maximum height above the floor of the canyon of 28 feet; with a clearance of nineteen feet;

2658 At Latigo Canyon: A cattle pass, one 8 foot trestle span, in connection with which the witness testified that it was built purposely for a cattle pass; but that all of the bridges provided for were cattle passes; that this was the only special cattle pass provided; that he had had experience as to whether cattle would pass under the bridges that have been constructed over the ranch roads; that he had seen them pass; that the sides of the canyons were not so steep that they could not get under the bridges;

2659 At Escondido Canyon: A 138 foot trestle bridge, with a clearance of twenty-three feet;

At Ramirez Canyon: A trestle bridge 114 feet long, with a maximum clearance of seventeen feet;

At Dume or Zuma Canyon: A combination pile and trestle bridge, 152 feet long with a maximum clearance of nine feet, in connection with which and the continuation of the road west-
2660 erly and immediately adjacent the witness testified that the proposed road and bridge would necessitate the removal of a part of a pipe line and certain standpipes of a water system of the defendant Rindge Company; but that this could be done at an expense of about two hundred dollars; that it was feasible to move the standpipes without tearing them down and reconstructing them and that such removal would not injure the operation of the water system;

2661 At Trancas Canyon: A combination pile and trestle bridge 209 feet long, with a maximum clearance of nine and one-half feet;

At Encinal Canyon: A thirty-eight foot wooden truss bridge, with a height above the canyon of 23 feet, clearance 21 feet;

At Canyon Just East of Luchusa: A seventy-six foot truss and trestle bridge, with a clearance of 24 feet;

At Los Alisos Canyon: A fifty-seven foot truss bridge, with 21 foot clearance;

2662 At Nicholas Canyon: A thirty-eight foot wooden trestle, clearance 16 feet;

As Sequit Canyon: A combination pile trestle bridge, 152 feet long, with a clearance of five feet;

At Flat Rock Canyon: A culvert. A 60 inch pipe, 180 feet in length;

At Steep Hill Canyon: A culvert. A 60 inch pipe, 100 feet in length;

At Latigo Canyon: In addition to cattle
2663 pass, a 30 inch pipe 80 feet long for drainage;

At Walnut Canyon: 60 inch pipe 90 feet long. That there was no necessity for a bridge here;

Unnamed canyon west of Encinal: A 24 inch pipe 90 feet long;

Canyon between Los Alisos and Nicholas Canyons: A 24 inch pipe 80 feet in length;

Canyon just west of Nicholas Canyon: A 48
2664 inch pipe 130 feet in length.

At this point the following further proceedings were had and taken:

J. W. F. DISS,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

My voting residence is Escondido Canyon, Los Angeles county, in the Santa Monica moun-

2665 tains. I am a ranch and broker and divided my time between that, incidentally doing some literary work, so-called. I am familiar with the Santa Monica mountain country east of the Ventura county line and north of the Malibu Ranch and south of the state highway. I have known that country about sixteen years. The road that runs easterly from Cornell, first, in a rather southeasterly direction, and then easterly, I have traveled between Calabasas and Cornell
2666 Junction. I can't place exactly when; some time ago, several years ago; I should say two or three years ago; about three years ago.

Q. Describe the road as you saw it on that occasion.

Mr. Anderson: Object to that as too remote, if the court please.

The Court: Overruled.

(Exception No. 44.)

2667 A. The road leading in from Calabasas in through that country to the Cornell Junction was a road at that time when was practically impassable for automobiles. It was used as a teaming road, and even at that it was not a very good road.

Q. Now, Colonel Diss, will you kindly describe the road from Calabasas? Step down and use the pointer. Describe how you went from Calabasas to Cornell. Triunfo is indicated by the circle on the state highway and

2668 Cornell, I have already shown you, and here is Calabasas on the map and Dry Canyon is here. A. To the best of my recollection, at the time we made that trip through there, there was only one trip because of the roughness of the country, we came down through this way and came directly west to this junction point here (indicating on map).

Q. Just a moment. The witness indicates
2669 the road leading south from Calabasas through Dry Canyon to the junction of the roads in Dry Canyon, one of which leads to south and one west, thence westerly directly under the elevation figures "613" in a general westerly direction to where the road turns south; thence south to just above the word "creek" in the phrase "Coal Creek"; thence westerly to a point just below the word "Stokes" in "Stokes Canyon"; thence southerly to the junction of another road
2670 which runs southeasterly a little bit east of the "C" in the word "Canyon" of the words "Triunfo Canyon"; thence westerly the road being just above the word "goat" in "Goat Buttes" dipping to the south and turning to the west, turning to the north, turning to the west at its junction with a road that leads north to the junction of the Ventura road of the state highway, known as the Vejor road; thence westerly; thence in a generally northwesterly direction to Cornell. Now, is there anything further that

2671 you can tell us about that road, Colonel? You may just resume the stand. A. It was badly cut up and many breaks in it, which made traveling extremely difficult. It was an up and down road. There were no very long level stretches that were appreciable. In quite a few places it was extremely steep. I can't remember exactly where they were. I know we went up some approaches that were almost impossible for us
2672 to get up. It took some considerable effort for us to climb them. We were driving in a spring wagon, two horses. I am somewhat acquainted with the use of the automobile. I drive a machine myself. I have had a little bit of experience in driving. I have driven about eight or nine or ten years. I don't have any idea of the number of miles I have driven in an automobile —eighty or a hundred thousand; maybe more. From my experience in the use of an automobile
2673 and driving one, I would not say that is a road that could be driven with an automobile, not at the time I was over it.

Cross-Examination

By Mr. Anderson:

That is the only trip I ever made over that road. I think it was in the neighborhood of three years ago. I had a man named Dominguez with me at the time, driving with me; no one else. I was going out to look at some land that was cited me near Cornell. After we

2674 reached Cornell we went back by the Russell ranch, towards Triunfo, and out that way. We found a pretty good road out that way, if you eliminate ditches and creeks and things of that kind. If you eliminate the streams of the winter it was a passable road. There were no serious grades on the road.

M. D. BEATTY,

called as a witness on behalf of the plaintiff, be-
2675 ing first duly sworn, testified as follows:

Mr. Burnell: I think we can agree with counsel and save some time. Miss Beatty is a deputy county clerk and assists Mr. McPherrin in acting as clerk of the board of supervisors, and she has produced here certain records of the board and those records show that bonds were authorized to be issued by an election held in the Decker school district.

2676 Mr. Anderson (interrupting): The election being held pursuant to a resolution of the 14th day of January, 1918.

Mr. Burnell: That is the resolution of the board of supervisors.

Mr. Anderson: Yes, and that election was held on the 18th of February, 1918. Now, before proceeding, or stating the effect of that, we are going to stipulate, subject to the objection that it is immaterial, irrelevant and incompetent, in so far as the main case is concerned, because

2677 it was held eighteen months after the resolution, upon which the main case is based; as far as the Alisos case is concerned, that is not the case; but we also object to it generally as to all three cases as being incompetent, irrelevant and immaterial. The mere fact that the school district may or may not have issued bonds—

The Court: I think it is irrelevant as to the beach road, so-called, but it is relevant to the other.

2678

(Exception No. 45.)

Mr. Burnell:

Yes; to go further, it is stipulated that the election was held pursuant to proceedings duly had in the school district, February 18th, 1918; that the issuance of bonds was voted at that time for the building of the new school house, and that those bonds have been actually issued and actually sold.

2679 The Court: Then, gentlemen of the jury, you will understand that it will be so understood as though Miss Beatty testified to that.

Mr. Anderson: Now, as to the Los Alisos—

The Court: It will be of course only considered by you, it will be considered only with respect to the Alisos Canyon road and the Main Malibu Road. It has no relevancy or materiality as to the beach road.

(Exception No. 46.)

2680 Mr. Burnell: We will connect it up further by again putting Professor Lowe on the stand.

W. O. LOWE,

recalled on behalf of the plaintiff, having been previously sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I testified the other day that I was assistant superintendent of county schools, and that I am
2681 familiar with the Decker school district and the Decker school house. There has been action taken by the school authorities in regard to building the new school house. It was voted on in February, I think, of this year, and the bonds sold in April of this year. I refer to bonds of the Decker school district. The present school house, the one I described the other day, is not sufficient in size and accommodations for school
2682 purposes in that district. It is hardly large enough for the number they have at the present time.

K. A. MILLER,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

I reside in the city of Los Angeles and have lived here thirteen years. My occupation is at-

2683 torney at law. I am acquainted with the country to the west of the Ventura county line and lying along the coast. I am familiar with the country known as the Yerba Buena settlement. I own property in Ventura county west of the Ventura county line and near the coast. I own, I think, about 2½ miles of water front between the holdings of the Rindge ranch and the Guadalasca, connecting up the two. It would be
2684 right here, where Little Sycamore Canyon, or what is called Little Buena Canyon is, at a point marked 16 on the map (Exhibit 6) adjoining the property of the Rindge Company and running up to, practically to Big Sycamore, all excepting about one-quarter—40 acres.

Q. How far does your land extend northerly from the sea coast?

Mr. Anderson: At this point I am going to make the objection that I have made to all of the
2685 witnesses who testified as to conditions westerly of the Ventura county line, on the ground that there has been no foundation laid; in other words there has been no showing made yet that there is any approach from that section, or any means by which they can reach any part or portion of the three roads.

The Court: Same ruling.

(Exception No. 47.)

A. I also own 160 acres here on Little Sycamore, about a mile and a half or two miles from

2686 the ocean. It would be right up in here in this circle that is surrounded by the red figures.

Mr. Burnell: I will ask Mr. Scotton to kindly indicate the property of Mr. Miller. A. It belongs to Mr. Houston.

Mr. Anderson: I presume it will not be necessary to renew my objection?

Mr. Burnell: No, it will be understood that it applies to all of the testimony.

Mr. Vallee: All of his testimony with refer-
2687 ence to this particular map (Exhibit 6)?

Mr. Burnell: Yes.

Mr. Scotton: It will be X-31.

Q. By Mr. Burnell: I will ask Mr. Scotton to indicate on the map or put another mark on the other property of Mr. Miller, in between Little Sycamore and Big Sycamore.

Mr. Scotton: I have placed a green cross in the southeast one-quarter of section 15 and
2688 marked it 31 in red, indicating one of the parcels that Mr. Miller states that he owns. I have also placed a red cross and marked it 32, in red, at the western boundary of Mr. Miller's property, so stated, which property he states extends easterly to the point near the red circle marked 16, which is the western boundary of the property of the Rindge Company along the coast in Ventura county.

(Continuing). The location of my property has been indicated with approximate correct-

2689 ness by Mr. Scotton on the map. I own in that parcel, the property which Mr. Scotton has marked with the green cross and the circle 31, 160 acres; in the piece at 32, 500 acres. Some of that property is in cultivation. I don't think there is any of it in cultivation this year, but it has been up to this year. I don't think there is any of it in cultivation this year; I would take it twenty-five to thirty acres has been in cultivation. I should say out of all of it, not to exceed
2690 75 acres is suitable for cultivation. Some of it is suitable for grazing cattle. I have cattle on the land until this year; I suppose there was thirty or forty head; the tenants had them. There is a reason why I ceased cultivation and ceased having cattle on the land since last year. We couldn't get in and out, no roads.

Q. Now at any time, Mr. Miller, has there been any road which you have used to get in and
2691 out of that property? A. When I first became familiar with the property back in 1909, or 1910, I went up the coast, the road that goes up the coast through the Malibu Ranch.

Since August 1st, 1917, I have gone to or from my property by the Malibu Ranch once. That was about August or September of 1917. I went through the Malibu Ranch at that time; I got a pass over it. I think I got it through Mr. Scotton, or somebody else got it for me. It was from one of the owners of the Malibu

2692 Ranch. There is no road, or other way, by which it is possible to get in or out of my ranch than through the Malibu property. I have tried to.

Q. When was that?

Mr. Anderson: We object to that as immaterial, if the court please.

The Court: Overruled.

Mr. Anderson: That is it was in the nature
2693 of cross-examination. He asked him if there was any other way.

The Court: Overruled.

(Exception No. 48.)

A. Well, since we were prohibited from going through the ranch property, or the Malibu property, the last two or three years; and I investigated the roads prior to that time to see if there was any way out or in.

Q. And you found there was none? A. No,
2694 I found there was none except to walk.

The only way you can get out of there, except going through the ranch property, is going up Sycamore canyon, Big Sycamore, or Yerba Buena, and then you wind around the tops of the hills on the mountains and get out. There is no road—a trail, not a trail that you can get a wagon over. In some places it is almost impossible for a horse to go up and down it. You have to lead it. I am acquainted with a road that has been referred to here by some of the

witnesses as the Mondell road, and by others as partly the Mondell road and partly the Marion Decker-Jasper Thomas road. I know where it is. I went over that road prior to the Rindge Ranch being closed; you can travel that clear down through Ventura county. That comes down by Mondell off the hill and comes down into the mouth of Yerba Buena Canyon, or Little Sycamore, and then turns to the west and comes down to the coast and down to the Ventura county line. That road has been opened up ever since I have known the country; that has been open since 1909, I know.

Q. Has anyone ever stopped you from traveling over that road?

Mr. Anderson: Object to that as immaterial.

The Court: Overruled.

(Exception No. 49.)

A. No; there was no interference there.

By Mr. Burnell: There were no obstructions on that road so far as I know, no gates. I have passed through the Malibu Ranch on the way to and from my property probably a dozen times. On those occasions I observed railroad tracks upon the Malibu Ranch.

Q. State whether or not you ever saw any trains on those railroad tracks.

Mr. Anderson: Object to that on the ground that it is immaterial. All of that matter about the trains on the Malibu Ranch was developed

2698 entirely on the cross-examination of Mr. Scotton, and is not material to any part of the issue here at the present time, so far as necessity is concerned. This particular right of way, I think we can state with correctness, the proposed road only involves less than three acres of this particular 60 foot right of way where this road is constructed, and it seems to me it is a waster of time to go any further into that railroad situation.

2699 The Court: It is all cumulative evidence. We are getting a lot of cumulative evidence here on matters the issue of which is not very seriously contested. Overruled.

(Exception No. 50.)

A. I have seen freight cars. My recollection is they were never pulled by an engine; they were pulled by mules or a team. Some of them may run down the grade of their own

2700 momentum. They would haul them up the grade, and then they would run down themselves.

Mr. Anderson: I ask that the answer be stricken out. The question was what kind of motive power and to describe the cars. A. They were just plain flat cars.

The Court: Motion denied, taking into consideration the witness is a lawyer.

(Exception No. 51)

2701 By Mr. Burnell:

I am acquainted with some of the trails or paths lying east of the Ventura county line and north of the Malibu Ranch and south of the state highway. I am acquainted with the northern portion of a road or trail that runs from the old Topanga Canyon road westerly to Stokes Canyon and Cornell, indicated on this map (Exhibit 6) by the yellow line, from Cornell
2702 east; that goes through the Crags country, at the head of the Malibu Creek. I am familiar with that. That is the road that is indicated in yellow on the map (Exhibit 6). I have traveled over that road two or three years ago, I would say in August of 1914. That is about four years.

Mr. Burnell: What was its condition at that time?

Mr. Anderson: Object to that as too remote.

2703 Mr. Burnell: It is only two years before the suit was filed, and it was only a year and a half before the resolution.

The Court: Overruled.

(Exception No. 52)

A. Well, there isn't any road.

I am familiar with the use of the automobile; I had an automobile but I couldn't use it. I didn't take it into that country. I took it as far as I could and then I got a horse. I have been familiar with the use of the automobile

about 10 years. I drive one myself; I have driven one for 8 years. I would absolutely not say that the road that has been established there was a safe road that could be used by automobiles. There was no road at that time that could be used through that country by an automobile. It was a road up hills and canyons and through a country that it is impossible to build a road or keep it up, after you build it.

Mr. Anderson: I move that that be stricken out as a conclusion of the witness, that it is impossible to build it or keep it up, no foundation laid.

The Court: Motion denied.

(Exception No. 53)

Cross-Examination

By Mr. Anderson:

I say I made this trip August of 1914. I came up to Triunfo, on this state highway (indicating on Exhibit 6). I know where Triunfo is; that is on the Russell Ranch. I started over here from Triunfo; I had just a horse. I went first over into the Decker settlement. I started toward the ocean in the direction of the Decker place. Following the road from Triunfo, it was a trail most of the way. It commenced whenever you leave the Russell Ranch. Going south, part of the way we traveled by wagon a mile or two, probably one mile out of every two. There

2707 would be a break where the road could not possibly be traveled by wagon. I went by Cornell. From Triunfo to Cornell there was one mile in every two that could not possibly be traveled by a wagon; it may have been there was more than that; I am not familiar with the point between the place I was traveling.

Q. I mean to ask you about two definite points, from Triunfo to Cornell; would you say
2708 there was no road excepting one mile in two at that time? A. Well, it is a little more or less.

Q. Give us your best idea how much more? A. I wouldn't say there was more than half of it was passable by wagon. I mean safely passable.

Q. Passable at all; was there any part of it that was impassable? A. Evidently there was, because there was one man turned his wagon over.

2709 Q. I am asking you, for your recollection, if it is that there was a trail or road from Triunfo to Cornell that was absolutely impassable to a wagon? A. Well, now, that would depend on the man handling the wagon.

Q. You have undertaken to testify about the character of that road. You have testified that a certain road was impassable and that it cannot be built or maintained. A. What I mean is at an economical cost.

2710 Q. Is this particular branch of the road—was there any portion of the road from Triunfo to Cornell in that trip you made in 1914 or 1915 whenever you did mention, over which it was practically impossible and over which it was impossible to drive a horse and team? A. Yes. That distance was an appreciable distance, practically about half the way.

Q. Now, from Cornell where did you travel, from Cornell, after you left Cornell, which is
2711 at the point indicated by the circle and the name—that is Charley Decker's (indicating on map). A. I am only using this for the range. From there on I was hunting. Then I rode into the canyon and then we camped here, and I was out the next time, and I was down here, to the Crags Country Club. I know that it is at the head of Malibu Creek. I am not familiar with the streams nor the country or its different
2712 places. I didn't go beyond the Crags Country Club. The Crags Country Club was the limit of our trip, on that occasion. I have never been beyond it at any time, excepting at Malibu Creek. I was there fishing or for some other purpose. From Cornell to the Crags Country Club I do not think the portion of the road which I saw going by, is practical as a road to be maintained or built. It could be built but I do not know about its being maintained. It is practical. I have never been to the Crags

2713 Country Club excepting on that one occasion. I went back and then came over the hill and went over Los Alisos Canyon. I came back here to the Decker place and through Los Alisos Canyon and down Los Alisos Canyon to the ocean. I came across Los Alisos Canyon on horseback. It was one of the roads I came over, where it had been built by the Rindges.

Q. How do you know it had been built by the Rindges? A. I saw a road built there
2714 and I went over it afterwards where they had blown it up.

Q. That is the road that goes to the Ernest Decker place, isn't it? A. I think it is the road that goes to the Charley Decker place.

Q. Now what road went into Charley Decker's place excepting the one through Encinal? A. Over at Los Alisos Canyon you meet it, you can come down to Charley Decker's place,
2715 down the canyon or across the ridge, and come in below Los Alisos Canyon. It is a pretty hard road. Where it was blown up it was a wagon road. It is called the Los Alisos Canyon road; it may be on the hog back and it may not—I don't know. That is the road I understood was the Charley Decker road. Straight down the canyon—down Los Alisos Canyon. We have to cross the range, to make that one. I am familiar with the Charley Decker place, not with the Ernest Decker place. From Cor-

2716 nell back to Charley Decker's place the road or trail that I took was not any defined road; some places it was a trail, and at places I found a wagon road. From Cornell southwest I found a continuous road; some places, two or three miles. You might say for some purposes of travel it was interrupted and others it would not be a road at all. It was not what we call a road, which could be safely traveled—for peo-
2717 ple to get out and in—I would not call it a road. There was no evidence that wagons had gone over it clear to Charley Decker's.

In getting from Cornell back to Charley Decker's place, it was not any defined road, some places it was a trail and some places from Cornell to the Charley Decker place I found a wagon road. From Cornell southwest I found a continuous road, in some places two or three miles. You might say for some purposes of
2718 travel it was interrupted and others it would not be a road at all, what we call a road, which could be safely traveled—for people to get out and in—I would not call it a road. There was no evidence that wagons had gone over it clear to Charley Decker's. I don't know Mr. Vaughn's place, indicated by X-5; I don't know where it is; I know where the school house is.

Q. How close did the road come to that?
A. Quite a ways.

2719 Q. Well, how far? A. After you leave the turn in the road, where it goes down the road and undertakes to go into this canyon, there is practically no road. There was not at that time; there was not last year. I made a trip over that last year to Charlie Decker's.

Q. Which way did you travel, by Cornell, or what is now known as the Decker trail? A. I don't know anything about Cornell.

2720 Q. Well, we have been talking about Cornell all the afternoon. A. Excepting on the map; people live along there in houses.

Here is Triunfo, you come over through Russell Ranch and down through here. After you get over six or seven miles and start up the mountains you have got a trail; it is a kind of a wagon road, but it is narrow, four or five feet wide; it has been dug out by the people in that community, but it is very, very steep. My

2721 last trip was made partly over the same route as my trip in 1914. Last fall when I was to Charlie Decker's I didn't go down that way.

Q. In getting to Charlie Decker's from Triunfo, after you reached the point here at Cornell, you took practically the same route as previously, and saw no change or improvements? A. There had been some digging.

That is the only route that I have taken to get from Triunfo to Decker's.

2722 Q. Is there a road known as the Mondell road? A. No, we have a trail; there is a trail from here—it comes down here, and through to Santa Monica (indicating on map).

That cultivated land is over here about half way between the western and eastern terminus. Between the red 16 and 32 and over in 31.

Q. In so far as your cultivated land is concerned, between red 16 and 32, so far as that is concerned, is there any road from that point
2723 to the Mondell road? A. Yes, we strike the Mondell road down here at the mouth of the Yerba Buena Canyon.

Q. Indicate where the wagon road runs to that point. A. Here is the land adjoining, the west boundary of the Rindge Ranch, which is the mouth of the Yerba Buena Canyon. Now that is comparatively flat country, that road is connected up with the road that comes down—

2724 Q. Oh, I am talking about a road from that point to your cultivated land. A. I am talking about the cultivated land in section 17 at point 31.

Q. But I am talking about between 16 and 32. A. You have got to come down the ocean front.

Q. That is the only means of travel? A. Excepting a trail that is built up on the side of a hill, to carry a horse, it is the only way you

2725 can get in or out; that trail has been there a number of years.

Q. As a matter of fact the beach, in many places, is impassable, isn't it, from that point down to the beach road? A. It is, at low tide places, where you can get through; it is only about a half a mile anyway and you can go from Deer Canyon down to the Mondell road. Q. That is the only way, and your only means, excepting a pack trail? A. At certain
2726 hours a day you can use it.

Q. Do you know where Point Magu, Little Magu, is? A. I don't know where it is.

Q. Isn't there a large promontory on [redacted] ranch? A. No, sir. It goes straight up and down, but in front of it is a surveyed road.

Q. Is it east of Dry Canyon—east of Dry Canyon is there not a large promontory that prevents passage on the beach? A. No.

2727 I have traveled the beach with a wagon two years ago, going to the ranch. I got through up the coast, up through the Malibu Ranch. I believe for three days we were in front of the Malibu Ranch, stuck in the sand. That is the time they would not let us go through.

Q. I understood you to say that you had been over that ranch road only once in three years. A. Oh, no; at that time I didn't go over it anyway. I didn't go over their land at all.

2728 Q. You went over what Judge Oster decreed to be a public road? A. Wherever I could get off it. We had a four-horse mule team, and wherever they didn't run us off, wherever they didn't come out with their guns and chase us, we went down on the sand and pulled through the sand.

Q. Exactly. There was private roads recently constructed which they did not permit you to use on that trip? A. However, we had
2729 used them.

Q. Yes, when they were broken through, you used them until you were stopped by injunction? A. I don't know how they were stopped; but they raised a lot of trouble. That is what I say about the trouble with the roads.

Q. You don't know anything about that injunction suit concerning those private roads, with all your familiarity with that country?
2730 A. Yes.

Q. You know that the court had enjoined the use of those private roads? A. I know they enjoined the ranch from interfering with the travel over the road.

Q. Don't you know that the court had enjoined them from using the road, that the suit of the Rindge Company had resulted in an injunction? A. Probably I was familiar with it at the time.

2731 Q. Were you when you were going up there with this six-mule team? A. The last time?

Q. Two years ago. A. I don't know anything about it; I didn't know about it then I don't think. I wouldn't say, because when I went up there, I usually got from Mr. O'Melveny or Mr. Scotton, or Mr. Lantz, or somebody else—I would get a pass. When the matter would change and people would say that the travel was all right, then we would go up.

2732 Q. Will you answer my question. Did you, or did you not, when you were up there two years ago with a six-mule team know that there had been an injunction suit brought by the Rindge Company against Fitzpatrick and others in which the court had enjoined the use of these private roads? A. Not unless I was told by somebody. I did not know of my own knowledge.

2733 Mr. Anderson: Well, were you told by somebody? A. I don't know whether I was or not.

K. A. MILLER

(Recalled)

Direct Examination

By Mr. Burnell:

Q. Mr. Miller, I understand you want to correct your testimony in one particular; is that so? A. As to the road leading from the Decker place down to the ocean, this (indicating

on map) instead of being Los Alisos Canyon is Nicolas road, about half way between the Nicolas Canyon and the Nicolas and Los Alisos Canyon.

Q. That is, Mr. Miller, you are referring to the road or path, you told us yesterday you traveled in on from the Decker place down to the coast. A. Yes, sir.

Q. And the road is known as the Nicolas road and not Los Alisos Canyon? A. No. There is a trail down Los Alisos Canyon. You can come down that road. The particular road is the road that goes up past the school house and along on the Nicolas flats, through the large potroro there, and then you come down the road to the ocean. That is the Nicolas road.

Mr. Burnell: That is all.

Cross-Examination

By Mr. Anderson:

Q. Mr. Miller, you say there is a trail down the Los Alisos Canyon? A. Yes.

Q. It is not a wagon road? A. No.

Q. Just a place you can walk? A. Well, I have traveled down. You can ride horses.

Q. Did you ride a horse? A. Well, I walked down but I would meet people on the trail going back and forth on horses.

Q. Who did you ever meet on that trail horseback down Los Alisos? A. I beg your pardon.

2737 Q. Who did you ever meet on that trail horseback down Los Alisos? A. I met the Rindge line riders coming up through there.

Q. The line riders—they were riding up and down along the boundary line? A. Well, on the trail. They were coming up the trail and they were not on the Rindge property at the time.

Q. How many times have you met those line riders? A. I only met that particular man
2738 once.

Q. How many other people have you met on that trail down Los Alisos riding on horseback? The trail you say you walked. A. Mr. Fitzpatrick. He rode down; he was with me.

Q. You and Fitzpatrick rode down together? A. Yes.

Q. You, of course, know Mr. Fitzpatrick pretty well? A. No, I don't. I just met him
2739 that time I was through there.

H. I. COMLY,

recalled.

Cross-Examination.

Mr. Anderson: If the court please, during the progress of the examination, I think of this witness, he supplied us with a table showing location and length of (the present) traveled road within the new proposed right of way of the new Malibu road shown on county sur-

2740 veyor's map No. 8070, the map that is Exhibit A of this complaint; the distances are scaled. Now, I don't think that was put in evidence. I think it was merely supplied.

The Court: My recollection is that it was; if it was not, it may be put in.

Mr. Anderson: Yes; we would like to offer it.

The Clerk: That will be Defendant's Exhibit 14.

2741 (Included in exhibits to be certified up.)

Mr. Anderson: Now, if the court please, at the close of the examination of Mr. Comly, we referred to a number of those profile maps and we wish to offer those profile maps in evidence, with the understanding, as I think we have agreed with Mr. Burnell, that they may remain subject to the call of the court, and if necessary blue prints will be substituted. Did I so under-

2742 stand you?

Mr. Burnell: Yes.

Mr. Anderson: I don't remember how many of those there were, but whichever were referred to.

The Court: They were referred to by Mr. Comly by number, county surveyor's number.

Mr. Burnell: It is understood, Mr. Anderson, that your offer refers to the profiles of the proposed Malibu road from the east end of the ranch to the Ventura county line?

2743 Mr. Anderson: Those about which he has been examined in the last two days.

Mr. Burnell: Yes.

Mr. Anderson: Do you know how many of them there are?

The Witness: Seven.

Mr. Anderson: Numbered 1 to 7, and they will be Defendant's Exhibits 15-A, 15-B, 15-C, 15-D, 15-E, 15-F, 15-G. (To be certified up by the clerk.)

2744 Mr. Anderson: I wish at this time to first make an offer of certain portions of the proceedings in the case No. 59557, entitled the People of the State of California, plaintiff, versus May K. Rindge, administratrix of the estate of Frederick H. Rindge, deceased, May K. Rindge and N. D. Darlington, defendants. The offer will include the date of the filing of the complaint, the date of the original decree,

2745 the date and contents, that is, certain of the contents of the original decree, the date and contents of the order with reference to a motion for a new trial, and the subsequent action by Judge Parker of Mono county as to the roads from Lachusa Canyon to the Ventura county line. That is for the purpose of getting in the matter in the nature of injunctions and the nature of the proceedings in that case.

Mr. Burnell: To all of which the plaintiff objects, on the ground that it is incompetent,

2746 irrelevant and immaterial; on the further ground that none of the proceedings had in the case of the People against Rindge were *res adjudicata* as between the parties in the present action.

Mr. Anderson: Of course, I don't offer them as *res adjudicata.*

The Court: No, I understand, I think they are relevant, especially in view of the testimony on the part of the settlers as to the injunction. Overruled.

2747 The Court: I understand that you are now proceeding in rebuttal.

Mr. Anderson: The complaint was filed on the 16th day of December, 1907, in the Superior Court of the state of California, in and for the county of Los Angeles, and is entitled the People of the State of California versus May K. Rindge, testatrix of the estate of Frederic H. Rindge, deceased, *et al.*, and it recites in the first paragraph that there is now and for more than

2748 thirty years last past there has been a certain public road in the county of Los Angeles, state of California, extending from the city of Santa Monica in a northwesterly direction along the shore of the Pacific Ocean to the boundary line of Ventura county, and that such road is 40 feet in width and that the road is more particularly described as follows, and then there is a description commencing in Santa Monica at the foot of a certain bluff, then there is a long

2749 description which carries it up to the ranch line and through the ranch line, and I believe we have stipulated that the road as shown on the map is the road declared by resolution of February 2nd, 1916, to be a public road, by the board of supervisors and is substantially the road covered by the complaint in this suit.

Mr. Burnell. The road in this present suit?

Mr. Anderson: No, the road in this suit I am reading from. In other words, the north-
2750 erly line of the road decreed by the board of supervisors on February 2nd, 1916, and appearing on that map is the road which is here involved in this action I am reading from, so far as it runs through the ranch.

Mr. Burnell: Up to the Ventura county line.

Mr. Anderson: Yes, and the description winds up by stating that it leaves the beach of the Pacific Ocean ascending the side of the
2751 Arroyo Sequit and following a westerly course along the line of the mean high tide line of the Pacific Ocean and into Ventura county and so on. It is not necessary to read anything further so far as this complaint is concerned. The next specific matter in this record which we wish to offer are the findings. The findings show that the cause came on for trial on the 6th day of October, 1908, before the court in department 7, the Hon. Frank F. Oster, judge presiding, the plaintiffs appearing by their at-

2752 torneys, J. D. Fredericks, Hartley Shaw, Haas, Goodrich & Dunnigan and the defendants by O'Melveny, Stevens & Millikin, Hunsaker & Britt and Fleming. Then there is a finding that there is now and was at the time of the commencement of the action a certain public road or highway in the county of Los Angeles, state of California, extending from the city of Santa Monica in a northwesterly direction along
2753 the shore of the Pacific Ocean to the Ventura county line and into said Ventura county and that the location and route of said road is more particularly described. Then there is a description which is identical with that in the complaint. Of course I state that subject to any correction, Mr. Burnell.

Mr. Burnell: Yes.

Mr. Anderson: Then the findings were signed on the 2nd day of May, 1910, by Frank
2754 S. Oster, judge of the Superior Court, and there is the filing mark May 2nd, 1910, C. J. Keyes, clerk, by Robertson, deputy. I next desire to offer the decree, based on the findings, under the stipulation already made, which recites that this cause came on regularly for trial on the 6th day of October, 1908, before the court in Department 7 thereof, the Hon. Frank F. Oster, judge, presiding, and so forth, the same recitation as in the findings. Then it states that it is hereby ordered, adjudged and decreed that there

2755 is now a public highway in the county of Los Angeles extending from the city of Santa Monica in said county in a generally northwesterly direct and near and parallel to the line of mean high tide of the Pacific ocean through the Rancho Malibu Sequis and into the county of Ventura. And then follows the same description as in the other document. And then follows a decree that certain obstructions should be removed, and then there is this following
2756 provision: It is further ordered, adjudged and decreed, that the defendants and all persons claiming under them be and they are hereby enjoined and restrained from asserting or claiming any right, title and interest to the road adverse to the people of the state of California, and stating that the road is a public highway. The plaintiff in that case being the People of the State of California.

2757 The Court: Of course it is not contended that that is adjudication as to the road.

Mr. Anderson: Oh, no, very much the contrary, but that is the injunction that was in force from the time of the decree until its reversal. Then it states that it was done in open court the 2nd day of May, 1910, by Frank F. Oster, judge of the Superior Court, and bears the file mark. That is the date, as I take it, from which time the injunction which I have read was in force.

2758 Mr. Burnell: Unless there was a preliminary injunction.

Mr. Anderson: There was not, and I will explain to you that we expect to show that prior to that, and I presume that that was the reason there was no preliminary injunction, the injunction of the federal court was in operation. I wish to offer the order in re the motion for new trial, on the minutes of the clerk of the court, Saturday, November 11th, 1908, which states
2759 that the motion was heretofore made, argued and submitted and it is hereby granted as to that portion of the road or highway in question, extending from Lachusa Canyon to the west end of the Malibu Ranch and denied as to the remainder of said road from the east of said ranch to said Lachusa Canyon. Now, I thought I would find the decision of Judge Parker, but I believe we can stipulate subject to your ob-
2760 jection that the portion of the case relating to the road from Lechusa Canyon to the west end of the ranch concerning which the new trial was granted, was subsequently tried before Judge Pat R. Parker, of Mono county, and that he decided that case in favor of the defendant, and the date can be furnished.

Mr. Burnell: That is correct as I understand it.

Mr. Anderson: We further offer the fact that on the appeal from the order denying the

motion for new trial, an appeal being taken to the Supreme Court of this state, that on April 7, 1917, the court rendered an order reversing the order denying the new trial and that was filed April 7th, 1917.

Mr. Burnell: Yes.

Mr. Anderson: Now, case No. 1379 of the District Court of the United States for the Southern District of the State of California, Southern Division, entitled, the United States of America versus M. K. Rindge as executrix of the estate of Frederick H. Rindge, deceased, *et al.*, and so forth, we will offer, and we will furnish later, copies, and stipulate that it may be deemed read, a bill of complaint which was filed December 3d, 1907, subject to the same objection.

Mr. Burnell: Yes, the same objection that it is not proper surrebuttal, incompetent, irrelevant, immaterial and not *res adjudicata.*

The Court: That is the Judge Bean decision?

Mr. Anderson: That is the Judge Bean case. We will further offer an order to show cause and a restraining order of December the 4th, 1907, and furnish a copy later and deem that it may be read and I will also state to Mr. Burnell that the order to show cause in that case was never heard. In other words, the temporary restraining order was continued from time to time until final decision was made and

2764 no injunction *pendente lite* other than the temporary restraining order was ever issued and the injunction was merged with the trial of the case and the restraining order remained in force from December, 1907, until the decision of the court October 27, 1913, and there was a decree of dismissal. The opinion is already in evidence in that little booklet.

The Court: It is not in evidence. The book was marked for identification only.

2765

Mr. Anderson: Oh, no, it was offered in connection with the letter.

The Court: I remember the offer and I remember the ruling of the court. There are matters in this book which are wholly irrelevant. Now I want it understood, because that is the record, and you will find it in the record, that the book is not in evidence.

Mr. Anderson: I will, of course, yield to

2766 Your Honor's statement, but Your Honor will remember, when we read the letter, which accompanied it into evidence, you said that it was not necessary to read that to the jury—

The Court: I recall the circumstances very clearly and I remember the ruling and you will find it in the transcript.

Mr. Anderson: If that is the case, then at this time I renew my offer, as that is part of the document which was transmitted to the board of supervisors and which has been read

2767 in evidence, and ask that it be received as a part of that communication.

The Court: That ruling is already in the record on that.

Mr. Anderson: Yes, but I am now renewing the offer under the misapprehension of the ruling.

The Court: There is no misapprehension at all about the ruling.

Mr. Anderson: Well, there is on my part.

2768

The Court. Then it will stand as it is.

Mr. Anderson: If it is offered for identification I now offer it as a part of the communication which did go into evidence.

Mr. Burnell: The same objection.

The Court: The same ruling.

Mr. Anderson: That is, it is now ruled out.

The Court: It has never been ruled in.

Mr. Anderson: Exactly; but it was in for

2769 identification, and I am now offering it in connection with the letter which was read in evidence, in which it was transmitted to the board of supervisors.

The Court: You are offering this document which is marked Defendant's Exhibit 3 for identification only, in evidence?

Mr. Anderson: Yes, as a part of a communication which has been admitted in evidence and in which it was transmitted to the board of supervisors.

2770 Mr. Burnell: The same objection.

The Court: Sustained.

Mr. Anderson: Now, at this time that is all.

The Court: I want it understood, gentlemen, in reference to this exhibit for identification, that the decree which has been referred to, the decision of the Supreme Court of this state and the decision of the United States District Court, the so-called Judge Bean decision is not in evidence in this case.

2771 Mr. Anderson: Yes. That is all we have at this time. We will now turn Mr. Comley over to you. If the court please, I find here that the remittitur in case No. 59557, the case of People against Rindge, was filed in the Superior Court of the county of Los Angeles, on May 11th, 1917. I wish to add that to my offer. I also find the judgment roll in the matter of Judge Parker's decision. I think I have it here.

2772 The Court: Do you offer a certified copy of opinion with the remittitur?

Mr. Anderson: Well, there is no certified copy of the opinion accompanying that, but I think it will be stipulated that the copy I have is a copy.

Mr. Burnell: Oh, yes, if you know it to be such.

Mr. Anderson: Yes, we know it to be such.

Mr. Burnell: Very well, we will stipulate.

2773 The opinion in question is reported in full in the case of People v. Rindge, 174 Cal. 743, which is hereby referred to and made a part of this bill of exceptions.

Mr. Anderson: Then I wish to offer the findings of fact and conclusions of law, without having them read, made by Judge Pat R. Parker, and dated the 28th day of June, 1917, and filed in the court on July 2, 1917; also the decree of Judge Parker, decree in the same case,
2774 which was dated the 28th day of June, 1917, signed Pat R. Parker, judge, and filed on July 2nd, 1917, the effect of the decree being that there was no public road—that is, holding in favor of the defendants as to that portion of the road from Lachusa Canyon west to the Ventura county line.

Mr. Burnell: Objected to on the same ground.

2775 The Court: Overruled.

Mr. Anderson: It will not be necessary to copy it into the record.

Mr. Burnell: No, it will be stipulated that Mr. Anderson's statement is correct, subject to any corrections we may later find necessary.

MRS. C. M. DECKER,

recalled on behalf of the plaintiff and testified as follows:

I am familiar with the territory where the old road that has been referred to in this case

2776 as the beach road is that I used to travel through the Rindge Ranch, that passes Zuma Canyon. On or about June 10th the principal old road went through the premises, that is, the ranch road; but the road following the railroad right of way to the mouth of the canyon. Near the mouth of the canyon the tide water comes in and often makes this almost impassable. I have seen the railroad bridge, a large
2777 part of it, submerged by the water from the tides,—not necessarily storm water coming down in the winter, but in the summer time—the water from the ocean; all except a small portion on the east side. When I speak of the road going through the ranch premises to the canyon, I am talking about the old road that I used to take back and forth through the ranch to our premises; we have been along that way. We had permission to travel that way for a
2778 while, and it passes through the premises at Zuma. There is no other road we could use going the beach way and going through the slough I just referred to. Going the beach way you avoid going through the premises; I mean right on the beach.

Q. Now, at high tide, can you use that beach road?

Mr. Anderson: Objected to as immaterial whether she could or not.

The Court: Overruled.

2779 Mr. Anderson: Also having been gone into fully on her other examination.

The Court: Do not prolong the examination, Mr. Burnell. Overruled. Read the question.

(Exception No. 54.)

A. Well, if the water is in this slough, you cannot.

Mr. Anderson: I move that that be stricken out as not responsive.

2780 A. Well, it is hard to explain. The road that goes down the beach would have to pass through this slough to get on the beach.

The Court: Now, the question is whether you have used that road in high tide—whether it is passable at high tide. A. Not if this was filled in with the tide water. This tide comes in and fills all this basin, and it throws up a sand bar and then the water does not escape immediately. Sometimes that condition lasts a

2781 week or two, and sometimes longer; that is, there is a sort of pond forms. I have been over the beach when I saw the water forming a pond. It came in the bed of the wagon; it would be 3 feet or more, it seems to me so. We had an ordinary farm wagon, a spring wagon.

Cross-Examination

By Mr. Anderson:

That occurs in the summer time, in July, and in the Malibu Creek the same way.

Q. How many times have you had that occur

2782 to you in the summer time? A. Well, I have passed through it twice that way, perhaps in that many years.

We have been traveling the road for several years, at various times, and twice we have passed through it in that condition. We had permission to travel over the road through the ranch property. That is the road that goes in between the stable and the houses and then out over the mesa. We got that permission from
2783 old Frank Ruiz; that is one of the employees on the ranch; Frank would let us go through. That occurred several times, perhaps ten times. That was not as often as we traveled the other road. I don't know how many times in the course of that seven or eight years that we were there, that we traveled by the beach road as distinguished from the road through the mountains. There was just about as many times we
2784 crossed the mesa as we had to go the beach from Trancas to Zuma. In that seven or eight years our full number of trips was approximately twenty times.

Mr. Anderson: In connection with the offer which I made this morning I have here a copy of the bill of complaint in the federal case which has been referred to No. 1379, and I wish to offer that in evidence and it may be stipulated that the reading is waived.

2785 (This decree is one of the exhibits to be certified up.)

Mr. Anderson: The only purpose of offering this is to show the property covered by the restraining order and that can be referred to later for the purpose of argument.

Mr. Anderson: Now, I wish to offer the restraining order and I wish to read it to the court.

2786 The Court: Same ruling. There is no description in it, is there?

Mr. Anderson: No. (Reading.) Title of court and cause: Upon reading the bill of complaint filed herein and the affidavits of Marion Decker, Charles M. Decker, Wm. D. Newell, Joseph A. Anker, James R. Shaw, E. H. Kincaid, Frederick R. Miner, T. K. Moffett, Perry Cottle, Charles O. Pollard and Oscar Lawler, certified copies of which said bill of complaint

2787 and affidavits are directed to be served herein and on motion of Oscar Lawler, United States Attorney for the Southern District of California, solicitor for the complainants.

"It is hereby ordered that the defendants, and each of them, show cause, if any they have, before the judge of the above entitled court at the court room thereof in the city of Los Angeles, county of Los Angeles, state and district aforesaid, on Monday, the 16th day of December, 1907, at the hour of ten thirty o'clock a. m.

of said day or as soon thereafter as counsel can be heard, why an injunction should not issue during the pendency of the above entitled suit or until the further order of the court pursuant to the prayer of said bill of complaint and it appearing from said bill of complaint and affidavits, that there is danger of irreparable injury to said complainants and their property, from delay in granting an injunction as in said bill of complaint prayed for, you, the said May K. Rindge, as executrix of the last will and testament of Frederick H. Rindge, deceased, May K. Rindge, N. D. Darlington, John Doe and Richard Roe, your clerks, agents, attorneys, servants and employes are strictly commanded and enjoined under the pains and penalties which may fall upon you and each of you in case of disobedience, that you forthwith and until the further order, judgment and decree of this court, desist and refrain from obstructing, impeding or interfering with ingress to or egress from any of the public lands of the United States described in the bill of complaint herein. Otherwise than by the maintenance of gates across the respective roads described in said bill which can be opened by hand without the aid of keys or other implements, it being the purpose and intent of this order without passing upon or determining the rights of either of the parties to the above entitled suit, that such ingress or

egress shall not be impeded or interferred with otherwise than by gates which can be opened and closed as aforesaid.

Dated December 4, 1907.

OLIN WELLBORN, *Judge.*"

Now that is the restraining order which, as we have stipulated, remained in force and was merged in the decision of the court, that decision resulting in the dismissal of the bill of complaint heretofore stipulated with regard to.

(The "roads" referred to in said restraining order were roads upon, across or through the Malibu Ranch of defendant, May K. Rindge and Rindge Company, and "the public lands of the United States described in the bill of complaint" were government lands to the north and west of the Malibu Ranch and in proximity thereto and which could be reached by the roads through or across said ranch.)

Mr. Burnell: I presume that you mean it was merged in the trial. You said in the decision.

Mr. Anderson: Well, it was in effect, because the decision covered it.

2794 R. F. MCCLELLAN,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Burnell:

At the present time I am one of the board of supervisors of this county and have been a member of the board about two years. I took office the first Monday in January, 1917. I was
2795 present at the meeting of the board of supervisors held on the 18th day of October, 1917, and took part in that deliberation of the meeting of the board that day. I remember a subject coming up before the board on that occasion with relation to the proposed road through the Malibu Ranch.

Mr. Anderson: I think I can stipulate with counsel that at the first meeting Mrs. Rindge and myself were present and participated; at
2796 the second meeting Mrs. Rindge, Mr. Newby, Mr. Guernsey and James Anderson were present.

Mr. Burnell: I think that that is correct.

Mr. Anderson: Mr. Scotton was there but he took no part in the discussion.

Q. Can you state generally what the subject of discussion was at that meeting?

Mr. Anderson: We object to that so far as the main case is concerned, it is incompetent, irrelevant, immaterial and has no bearing upon

2797 the issues in that case. We don't object to it as to the Alisos Canyon case, although it is a little remote as to that.

The Court: The objection will be overruled as to the Alisos canyon road and the testimony will be considered by you, gentlemen of the jury, if at all, with relation to the Los Alisos canyon road only.

A. I can not repeat all that was said; there was general discussion pro and con as to the
2798 feasibility of the road.

Mr. Anderson: Don't you think we can cover it by a stipulation that Mrs. Rindge sought to induce the board of supervisors to abandon the road through the ranch and there was a general discussion on that subject?

Mr. Burnell: I think that that was the effect of the meeting but there has been some testimony that we want to go into.

Mr. Anderson: Very well.
2799

As to the tone of that meeting, as to being orderly or disorderly, I think at times it was rather disorderly. It all came from questions asked different people by Mrs. Rindge's attorneys; there were a large number of people present. The proceedings of the board were orderly. The board listened to all those who desired to address it, both those who represented Mrs. Rindge and those who took the opposite view. All persons desiring to address the board had a

2800 full opportunity accorded them to address the board.

Mr. Anderson: This is entirely confined to the first meeting.

Mr. Burnell: Yes, the first meeting in October.

(Continuing.) I was also present at a meeting the 27th of May, 1918. That was the meeting about which Mr. Anderson and yourself have stipulated that Mrs. Rindge, James An-
2801 derson and Mr. Guernsey were present. I do not remember whether or not at that time there was any public discussion at that meeting with regard to the road through the Malibu. The meetings were orderly, but the discussion got rather warm at times. The board of supervisors listened to all those who desired to address it, no matter which side they represented, and listened to Mrs. Rindge and to her attorneys,
2802 Messrs. Newby and Anderson, and Mr. Guernsey.

Q. Do you remember whether or not the question of putting a road through from Triunfo, through the Santa Monica mountains, was discussed? A. The question came up as to the feasibility of it.

That subject was discussed very little. It was discussed as to the feasibility, from the standpoint of those who advocated such a road and from the standpoint of those opposed to it,

2803 but not to a great extent. The discussion came from the Rindge side and always has with regard to that Triunfo road. I don't know that the map that we had refers to this (Exhibit 6). It was merely a sketch from a newspaper. I know about the points through which the road ran. The old Topanga road, from the newspaper clipping is the only thing I have to go by. That is the only map we ever had or saw. There
2804 was no map or set of plans presented to the board showing the location of such a road, only this newspaper clipping, I presume. I have had conversation with Mrs. Rindge with regard to roads on the Malibu Ranch.

Q. Can you give us the date of any such conversation?

Mr. Anderson: We object to it as immaterial.

The Court: What is the purpose of it?

2805 Mr. Burnell: Admission of necessity, Your Honor.

Mr. Anderson: You mean to claim we have admitted the necessity?

Mr. Vallee: Admission as to whether or not the road was located compatible with the greatest public good and the least private injury.

The Court: Overruled.

(Exception No. 55.)

A. I talked with Mrs. Rindge; I couldn't give you the date, but I talked with Mrs. Rindge in

2806 the Hall of Records. I do not remember when it was, exactly. It was before we had started the condemnation proceedings, and I tried at that time to—

Mr. Anderson: If the court please, I object, then, on the ground that Mr. McClellan was not a supervisor at the time, because these condemnation proceedings were started in 1916.

The Court: I don't think it makes any difference.

2807 A. I am speaking of the one started when I was supervisor.

The Court: Just a moment. One at a time.

Mr. Anderson: Then we object to this conversation so far as the main case is concerned, on the ground that it would be incompetent, irrelevant and immaterial, matters occurring after the board had passed its resolution and commenced the condemnation.

2808 The Court: Overruled. You have propounded the question directly, and let us have a direct answer from the witness to the question.

(Exception No. 56.)

Mr. Burnell: Read the question.

(Last question read): "Do you remember the date?" A. I do not remember the date.

I know that it was after the 25th of August, 1917. I figure that date simply by securing a permit to go up over the Malibu to investigate

2809 the possibilities of a road. I don't think that anyone listened to the conversation at that time when Mrs. Rindge and I were talking of it. It was in the Hall of Records, right on the main floor in the supervisors' room: to the best of my recollection it was in 1917, and some time after the 25th of August. I asked Mrs. Rindge if we could not get together in a business way and select a right of way for a road up through the Malibu; that that was the only feasible way for
2810 one and that if she was willing to do that that the county would furnish an engineer and she could furnish one and we would have them go up there and select a right of way that was best suited and would do the least damage to the ranch; she said no, she would not do it. I said, "Why can't we do this, because you are maintaining a ranch up there now and there is a road tax of forty cents charged against your land
2811 and your valuation there for which you don't receive any benefits, and if the county has a road there this money will be available to help keep up the road, and it seems to me it would be an advantage to you instead of a disadvantage." She said no, she would not have those people crossing her ranch. That about ended the conversation. I don't think she mentioned any particular people. I think that is the last conversation that Mrs. Rindge and I had. I am not quite sure. That was not the first conversation I had

2812 with her. I talked with Mrs. Rindge when I went out for this permit to go on the ranch; that, I think, was about the 23d day of August, 1917, because I was up there the 24th and 25th. Mr. Scotton, I believe, was in the office. This conversation took place in Mrs. Rindge's office here in this city. We talked about roads, through the country there and the possibility of roads up over the Triunfo and cross out by
2813 the Crags Club in through that country. In fact, we looked over the maps. Mrs. Rindge's attention was to the map. She thought there could be a road up over the Triunfo and out that way, a road starting up at the edge of Topango Canyon and in there, going across; that is, starting one end at Topanga Canyon and the other at Triunfo. We discussed my trip going up there and the purpose of it was to look over some of that country up at the head
2814 of Corral Canyon and the Triunfo country. Mrs. Rindge said she thought there could be a road put through there that would be suitable to accommodate the settlers in that country, constructed from Triunfo to Topanga Canyon. I didn't reply anything in particular. I could not, because I didn't know. I was on my way to find out. Just after this conversation I went up the coast to Corral Canyon and then I went across the divide that comes in at Corral Canyon and came out over to the Crags Country Club.

2815 Mr. Jones, one of the engineers of the road department, was with me. That is not the same Jones that is now acting as county surveyor. He is a bridge engineer. One of the settlers up in the head of the canyon went over the divide with us. I don't recall his name. I say we went up Corral Canyon from the Malibu Ranch. We went over a trail from the summit down to the Malibu Creek, went over the divide at the head
2816 of Corral Canyon and went over a pack trail there that packs down in about the Crags Club. From there we took the road from the Crags Country Club home. It is the main road that comes out on to the highway. That is the road that runs from the state highway up through this canyon to the Crags Country Club. It is the main road that everybody goes on to the club, the Crags Country Club. The road branches off and goes toward Malibu Creek. I have been
2817 over the so-called Decker road that leaves the main state highway at Triunfo and goes over the Malloy hill and into the territory sometimes called the Decker settlement. I was over there in July of this year. The condition of the road as I saw it in July of this year into the Decker place is a rough, hilly road. We left the state highway at Russell ranch and went down through the ranch for about three miles and then we turned off the main road. It was a very good road from that point and from there

2818 we started to climb through the gulches up to what is called Malloy hill, which is a rocky, rough, steep hill, although a good strong team can get up Malloy hill. But it is impracticable as it is today. We got up with the machine that we had and then we ran off the track and had to get horses to pull us out. Then from there on down to the Decker's there is a couple of miles that could be—it could all be made a very good road beginning from this water shed
2819 over that way, but coming back you find a steeper grade. The section I mean can be made a good road is from the Malloy hill down through to—clear down to the beach. Right down through the canyon to the coast. From Malloy hill, by spending money enough, it could be made a fair road through that country.

By the Court:

We went up this year with an automobile and
2820 tried to get through but we failed. We got off the road and could not make it. We negotiated the grade on the Malloy hill with a powerful machine. We had a Hup., that is in the road department, which is one of the strongest and best in the department. There was three passengers in the car, two and the driver. They did not remain in the car during the entire time. The part of the road that the machine had to be pulled out of with a horse was after we ran off the road, we had to get teams and haul the

2821 car out beyond the Malloy hill. We happened to get off the road because it was a narrow road, or something, anyway we got off, slid off in the fill, at a narrow place. I have been from the so-called Decker settlement down to the beach by way of Malibu Ranch. I went down the canyon, the one that the road is surveyed down, Los Alisos, I believe; I don't remember the names of all those canyons. I have been down all the way to the ocean; it was in July
2822 this year.

Cross-Examination

By Mr. Anderson:

I have testified as to two conversations with Mrs. Rindge, one in the main room of the supervisors and the other at her office. I think she was in my office at one time. It is not a fact that at that time I showed Mrs. Rindge a certain map, or a map of a road through the Triunfo, which I said I thought would satisfy all
2823 the settlers and would be the best route to take; nothing of the kind took place. That Triunfo road might have been discussed, but I never said there could be a road put through there. I said I would go and investigate it which I did. I investigated it just as I tried to tell you; over Corral canyon. Up Corral canyon to Crags Country Club and from there out on the road commonly used by the Crags Country Club, we spent fourteen hundred dollars surveying in there and trying to find a way.

2824 Q. Don't you know that this investigation which you made consisted of going up a trail through Corral canyon and over the canyon to the Crags Country Club and going from the Crags Country Club over the road customarily used by people going to and from the Crags Country Club to Los Angeles? A. It was a part of it.

We sent a crew of surveyors, attempting to find a road. Mr. Jones, with his crew, spent
2825 $1400 trying to find a way through there. We got a survey from them. I don't know as a matter of fact that the survey I have in mind is from Charley Decker's house to Triunfo post-office and not over the route we are talking about; you have got it wrong. I didn't have two surveys made in that region. I don't know what the board of supervisors may have done before I became a member of the board.

2826 Q. I call your attention to road book No. 18, of the supervisors' office, supervisors' records, and to page 214. On February 1st, 1917, you were a member of the board of supervisors? A. Yes, sir.

Q. I call your attention to the recitation on page 24. "The board met pursuant to adjournment. Present Supervisors J. J. Hamilton, chairman, presiding; R. H. Norton, F. E. Woodley, R. F. McClellan and J. S. Dodge." Is that

2827 according to your recollection? A. It should be correct.

Q. Then on the same page, I call your attention to this resolution: "In re road from Russell Valley to Los Alisos Canyon, order authorizing survey. On motion of Supervisor Woodley, duly seconded and carried; and in accordance with the recommendations by the county counsel, and the county surveyor, it is ordered
2828 that the county surveyor be and he is hereby authorized and requested to make surveys and notes for the preparation of a right of way for a road extending from the Meloy ranch house in Russell Valley to the house of Charles Decker in Los Alisos Canyon, on road district No. 5." Do you recall that?

Q. By Mr. Anderson: You were present and heard that resolution? A. You are talking about one survey and I am talking about
2829 another.

I was present and heard that resolution and participated in it.

Q. Do you recall any other survey being authorized by the board of supervisors than the one I have read to you? A. It was before that.

I don't remember the date. I said that survey was authorized by resolution of the board. The minutes of the board would show. The surveyor produced maps and profiles and we have them. I can get them from the surveyor's

2830 office. I can get the minutes of the grades out of my office, but not the maps. I made another trip later. I went through from Russell ranch to Decker's. That did not go over any part of the road from Topanga road to the post-office. The trip that I have been testifying to about Corral Canyon, and Crags Country club, and from Crags Country Club to Los Angeles was not the only trip that I personally made. I made several with regard to that road. I went
2831 through to the Decker place.

Q. You have just testified to that and stated that it had nothing to do with the road from the Topanga Canyon to the Triunfo post-office. Did it? A. Not the Decker road, but the other did.

With regard to this proposed road I made just one and the one I have described. It is a fact that prior to the meeting of the board of
2832 supervisors at which Mrs. Rindge and you were present on October 18, 1917, a very large petition was filed with the board of supervisors requesting the abandonment of the proceedings for the condemnation of the road through the Malibu Ranch. It is not a fact that I stated at that meeting or in connection with that meeting, that I had not read and would pay no attention to that petition because I thought it was a petition that should not have been presented for the reason that the other people had not

2833 been given an opportunity to present any petition. My statement was the fact that I did not believe the board would consider attempting to build a road across the heads of those gulches at a cost which would be prohibitive, when a road up the coast, the natural watershed, could be built for a quarter of the money. I did not understand that the road up the coast went for three or four miles back through the canyons and across the very gulches I am
2834 speaking of. I have reference to the head of Malibu Creek and all those canyons up there. They went over the heads of those gulches and ravines, and you could not get in there any other way.

Q. Then, as I understand it, you did not make the statement that you had not read and would not consider that petition because you thought the people on the other side of the can-
2835 yon had not had an opportunity to present the petition themselves; you didn't make that statement? A. No, sir, not in those words, at no time. The words I did state were just what I have repeated. I made no statement at all that I had or would not consider that petition. I don't remember that that petition was ever presented to the board in open meeting and considered by it. I know, as a matter of fact, it was filed, and I know, as a matter of fact, that I knew of its filing when it was filed.

949

2836 MINNEY O. SMALLEY,

a witness called in behalf of the plaintiff, being first duly sworn, testified:

That she was the stenographic reporter of the proceedings of the board of supervisors of Los Angeles county; that she was such on the 18th day of October, 1917; that as such she took down all that was said at the meeting of the board on that date.

2837 Mr. Anderson: We will stipulate that the witness will so testify and have no objection to her reading what took place. We have not the slightest objection to it.

Whereupon the following was read into the record. A Mr. Dodge was acting chairman at that time. He said, "There were two special matters that were set down for ten o'clock. Mr. Faries, county counsel, is not here, and we would not want to take up the matter of the 2838 Gas Company franchise in his absence. The other matter was a question of the Malibu road. If no objections I guess we will take that up.

'Mr. W. H. Anderson: Gentlemen, I appear, as you know, on behalf of Mrs. Rindge and the Rindge Company, the owners of the ranch. It is with some degree of rather a feeling of embarrassment that I appear, in view of certain statements that have been made in the newspapers concerning this matter, which, if true,

2839 would seem it is almost unnecessary for us to appear here at all. I don't know that they are true, and I hardly believe they are true. They are practically to the effect that this board has already pledged this matter and that any matters stated here this morning has no particular effect on this one way or the other, in the matter of making up their minds on the merits of the proposition of this road. The Record, for instance, last night under the heading of "Malibu
2840 road assured," says, "The evidence to be offered by Mrs. May K. Rindge,"' I didn't take that down and I have not the—I didn't procure that.

Mr. Anderson: It simply appears that I read an article from The Record. A. Yes, you read an article from The Record.

Mr. Anderson: If I can find it we shall ask the privilege of introducing it. A. I evidently
2841 took down a part of it as I could, but I don't believe it is all there.

Mr. Anderson: I suggest that the witness read as far as she can what she has there. It may be fragmentary. A. 'Will not affect the matter, according to the opinion of Supervisor McClellan. "We intend to put the road through," said McClellan. "We are hearing Mrs. Rindge in the hope we will be able to adjust the difficulty without going into long and expensive suits."' That is all of that. 'I take it you

2842 people so far as Mr. McClellan is concerned, he has already made up his mind. We have not said what he might or might not'—

Mr. Anderson: I didn't get that.

A. Just a moment.

The Court: We will take a recess and you can look over your notes. A. I think that is the last one I have not with me.

The Court: We will take our recess now. Gentlemen of the jury, we will take a recess for
2843 a few minutes. Please remember the admonition.

(Recess.)

(After recess; stipulated jury present.)

The Court: Now you may proceed.

The Witness: 'So I take it from that, so far as Mr. McClellan is concerned, he has already made up his mind irrespective of what we might or might not say to you this morning. I can-
2844 not assume, however, that he spoke for the rest of you in that particular. Now as a matter of fact, Mr. McClellan some weeks ago, or some time ago, made a statement and on the strength of that statement and on the strength of the fact that it appears there would probably not be any hearing unless some steps were taken by us, we prepared and filed with you a very elaborate statement of this matter in the form of a protest and accompanied it by the protest of some twenty odd thousand residents of that

2845 particular road district against the building of this elaborate and expensive road at this time, in view of the general unsettled financial conditions of the country. I note that Mr. McClellan is quoted again, "I have not inquired closely into the petition but so far as"—and I didn't get the rest—I take it of course that even though Mr. McClellan may not have up to this time given that petition any serious consideration, in view of the fact we have been backed up by the
2846 signatures of twenty thousand of the people of this county, and his road district, that before he comes to any final and ultimate conclusion in this matter that he will give it the serious and particular consideration it is entitled to and I take it you gentlemen will do the same thing. Now if you have not read that long statement I am not going to attempt to go into the elaborate history of this matter, but it is well known
2847 to all of you, that this road business out there has been in litigation since 1907 and it is well known to you that commencing in 1907 and extending down to practically last year,—the early part of this year even,—that road, in so far as it was used by the public at all was used under an injunction issued first by the United States government, and an injunction issued next by the Superior Court of this state, and that therefore during all those years it was used against the wishes and protests of the Rindge people,

2848 and in protest of this injunction, and whoever went in there, under that state of affairs, went in knowing very well that there was litigation pending upon which would depend the use of this road as a public road. No effort, up to last year, was ever made to do anything in the way of condemning this road. Last year condemnation proceedings were commenced, or pending, and whether they are pending in proper shape or not is a matter I don't care to discuss. Now,
2849 during that period of ten years, during a large portion of it at least, after Judge Oster's decision in 1910 and up to 1916, and prior to this year, the road was decreed to be and until that decision was reversed a public road, but the board of supervisors nor any one connected with it up to 1916, and late in 1916, never made any effort to keep that road, or any part of it in repair; moreover, a great portion of it was ocean
2850 beach that did not amount to a road, and the result was that miles and miles of it washed out and became useless, and the Rindge people, feeling no obligation to keep it in repair, built themselves private roads at great expense, and fenced and locked them and the result was that because this road was not kept up, the Ventura county ranchers suffered the alleged privations it is claimed they are suffering now, and for months the controversy raged over that, in which this board officially took no part, and these settlers

2851 came in and broke through the gates and committed all kinds of depredations until we brought action to restrain them, which action they did not defend and an injunction was issued against them and is pending now. The only reason I mention these facts is this, that the condition, after that road went into disintegration and the conditions which compelled the Rindges to build this private road for their own use, and the
2852 conditions which rendered miles of that road practically useless and stood there for months and even years, without any one feeling the necessity of putting in a day or spending a dollar of county money, to keep it in repair, now the courts have finally, and in three different instances, the Federal Court by Judge Bean, the Supreme Court through Judge Hinshaw and the Superior Court through Judge Parker, have unanimously held that these roads, pending in-
2853 vestigation, are public roads, and that is the condition that there is today. Rather anticipating the ultimate decision, the condemnation proceedings were instituted last year and are still pending. Now, as a matter of fact, and I think you gentlemen ought to consider this seriously, as a matter of fact the road that has been so much talked about running from Las Flores Canyon on the east through that 20 odd miles of Rindge property along the coast, to the Ventura county line, and the road that is in a sense covered

2854 by the present condemnation proceedings, that that road cannot afford any relief to a single solitary person west of the Ventura county line, because there are no public ways of any kind to the north of it, and it ends at the Ventura county line upon Rindge property, which Rindge property extends two or three miles into Ventura county, and there is no public road across that and you have no guarantee even, though the necessities are the same, you have nothing 2855 to guarantee that anything will be done in the other county. You have no guarantee of any public road there, so as far as any necessity for the road through the ranch, the coast road, this absolutely would be an utter and futile waste of money.

'Now, moreover, to build that road clear through to the Ventura county line would mean to carry it for five or six miles beyond the possibility of any user in the shape of Los Angeles 2856 county settlers, for practically the last man in Los Angeles county who, even if cross roads ultimately are constructed as the situation now exists, are the people who would use Encinal Canyon, which is a mile and a half this side of Lachusa, and five or six miles this side of the western end of the road.

'Therefore, the western end of the ranch would serve no one, except the possibility ultimately of building the road through to Ventura

2857 county to serve Ventura county citizens. Does it appear to you, as men of business and experience, who are entrusted with the funds of this great county, that in these serious times when money is scarce, you should build this road which, in the first instance, without additional expense, would afford relief to nobody—which in the next instance would afford relief so far as Los Angeles is concerned to a few canyon settlers to the north of the ledge, and, finally
2858 as to the last five or six miles of it, would afford no relief whatever to anybody in Los Angeles county certainly, and only in the ultimate future to anybody in Ventura county, provided the Ventura county authorities should take such action?

'Now, that is the road situation up there. Now, as far as the settlers are concerned, during all these times, as I tell you, when these
2859 roads were washed out, and when they had no right to use these other roads and were stopped by injunction from using them during the last two years at least, they have been able to get their supplies in and to get their crops out. The fact of the matter is that this is a hue and cry, which it seems to me is more in the nature of a thing stirred up by the Santa Monica and Venice Chambers of Commerce for the sake of a possible small amount of trade they may get, than by any real necessity that exists anywhere.

2860 I imagine, too, there are interests in this county that would like to see the county spend an immense amount of money on the consideration of the road for automobile scenic purposes; but I don't think this is the time to go into that kind of an expense at the expense of the taxpayers, particularly when taxes are high, getting higher, when money is scarce and getting scarcer, and when no expenditure not absolutely necessary should be made by anybody.

2861 'Now, it might be instructive for you gentlemen to know that in the government case, which was a very peculiar case, that the government, and the Rindge Company spent thousands and tens of thousands of dollars having surveys made and estimates made up along that ranch to determine the very identical question which seems to have been more or less influencing Mr. McClellan in this matter, namely, whether or

2862 not it was necessary for the courts to hold that their ways down the canyon through the ranch, that is, ways of necessity, because there were no other reasonable ways for these settlers to get out. That question, after the most elaborate consideration and expense, was determined adversely to the government and in favor of the Rindge people. Or, in other words, there was no ways of necessity.'

That word is 'ways' I think.

2863 'There were no ways of necessity, because there were other means for these settlers getting in and out. Now, since that time conditions have been very materially improved in that regard. Take the Decker people. They have roads and principally use the roads over the state highway. Others have ways out down Las Flores Canyon, and others at very little expense, according to what it would cost this county to
2864 condemn a road through the ranch, and 12 or 13 roads across the ranch to get the roads they need, and it seems that matter ought to be thoroughly considered before you take up the question of condemning 20 odd miles through the ranch with the possible necessity of condemning 12 or 13 roads across it.

'Now, what I have said so far has related mostly to the business end of it. But there is another end of it, notwithstanding there is a
2865 kind of public prejudice against it, and that is the question in which the interests of the Rindge Ranch should itself be considered and the Rindge people.

'The Rindge Company alone pays taxes in this city and county to the extent of something like $40,000, and is an institution that is engaged in enterprises that are of great benefit and should be of great benefit to the people of the county. For instance, they have this enormous ranch there which they are devoting, as

2866 far as they are able to, under the difficult circumstances that this annoying litigation has put them in—they are endeavoring to raise foodstuffs, cattle, hogs, wheat, grain, foodstuffs, that at this crisis, if at no other, are and will be of the greatest possible benefit to this country in furnishing food supplies which are so much needed and for which an appeal is daily going out from every government head in the country.

'Now the result of traffic over that ranch,
2867 even the result under the tentative injunction, was that innumerable forest fires were caused. Trespassers went up and down that canyon because they could not be kept out. Innumerable cattle were poisoned, hogs were poisoned, and traps have recently been scattered through the ranch and the result has been the loss not only of thousands of dollars to the Rindge people by people being in there, but it has resulted in
2868 destroying thousands of dollars of necessary foodstuffs, which it is a crime to destroy at this crisis, irrespective of the loss to the Rindge people.

'Now, those matters should be considered, and again you can readily see, any one of you, that if you were the owner of a large property like that, situated as that is, that nothing would compensate you for cutting it up into twelve or fifteen small holdings, by putting public roads down those canyons and across that ranch, and

2869 nothing in the way of a road will answer the so-called or supposed needs up there but that very identical thing. That is, as I said at the outset, you may build any road you please from Las Flores across to the Ventura line and it affords ingress and egress to nobody except the ranch owners themselves, because it begins and ends entirely on the private property of the Rindges.

'Now, gentlemen, this is not a matter that
2870 should be hastily gone into. It is going to cost a great many thousands of dollars to put this road, or these roads through here and you should certainly weigh not only the question of the cost against the so-called necessity or against the good benefit it will do, but you should weigh it as against what it would cost to give these settlers in Los Angeles county, the men whom you are to consider, and who are your constituents—what it would cost to give them adequate
2871 ways out onto the highway on the other side of the mountain. Most of them have it. Most of them who haven't it for wheeled vehicles, all have it by way of trails; and I think it is out of the question but what every one of them could be given adequate outlet at a much smaller expense than the construction of these roads, and certainly without doing anybody any damage whatever, and that is not the case in this instance.

2872 'I would like at this time on the suggestion of Mr. Scotten—we would really like at this time in order that we know somewhat where we are at, just what the board has definitely considered. I don't mean determined on, because I don't believe that Mr. McClellan was reporter—that the report of Mr. McClellan's statement—I think this should be taken more as a newspaper interpretation because I don't believe any of
2873 you gentlemen have definitely made up your minds irrespective of anything that may be brought before you; but what has been considered in the way of any road or roads up there? We have no definite information on the matter except that possibly something was going to be done.

'Mr. McClellan: Mr. Chairman, as long as this matter has come up, I am very glad to state where I stand in the matter. We have gone
2874 this far in the matter—been attempting to get together with the Rindge people and agree upon a road and right of way for a road.

'Mr. Anderson: Mr. McClellan, may I interrupt you right there. I would say this, that one of the principal reasons why Mrs. Rindge has not entertained that proposition is simply the fact that nothing in the way of an arrangement up there for roads as we conceive it would be of any benefit without cutting up the ranch by cross roads, and that is a matter of quite

2875 serious import to her that she does not feel that there is any compensation which would adequately pay for it.

'Mr. McClellan: And if we cannot do that we are disposed to condemn a road through there if we can do it.

'Mr. Anderson: Do I understand one or more?

'Mr. McClellan: Now, I want to go back to the meeting at Santa Monica. You and Mr.
2876 Scotten were there. Others were there representing the Rindge people. The Santa Monica people, the Chamber of Commerce and also settlers, asked me at that meeting if it was necessary for them to get out and circulate a petition for this road. You heard me say to them, No, not to spend their time and money on petitions, which they had not, because I told them it was not necessary, and on top of that you people
2877 scour the county and get names on the petition against the road. So, so far as I am concerned, that petition presented here by you don't have one particle of weight in the matter, because the other people were cut off from presenting their petition.

'Mr. Anderson: That was no fault of ours. I should think, gentlemen, that the right of petition is open to every citizen of the United States, and it is the right and duty of a public officer to consider any petition that is filed with him.'

'Mr. McClellan: Under ordinary circumstances it would be.

'Mr. Dodge: Anybody else would like to be heard in this matter?

'G. H. Starbuck: I would like to speak something about that petition that was filed. I think we can show, if given a little time, by the necessary affidavits, that that petition was misrepresented; at least the people on 45th St. have told me that that was to greatly increase their taxes and that they signed under a misapprehension. Two ladies made the canvas, I think, on 45th St., and I think if it is necessary we can show you that it was not open and above board, and if the board is disposed to give a little time on that I will try to show that to you. There people were informed, I am told, that there would be a special district and not come out of the general fund and, as a matter of fact, the neighbors got together there on 45th St. and talked the matter over and I think some of them would be glad to withdraw their names on that petition.

'Mr. Dodge: Have you anything to say as to the merits of building the road through the Rindge ranch?

'Mr. Starbuck: Well, of course I am perhaps prejudiced. I own land at both ends of that road if it was put through there.

2881 'Mr. Dodge: You heard what Mr. Anderson said about the road not reaching the settlers.

'Mr. Starbuck: That is true. They would not, except at one place where the survey strikes private property. I think it would in the upper end somewhere north of Lachusa canyon. I think it would strike private property there.

'Mr. Anderson: Absolutely not.

'Mr. Starbuck: I may be misinformed as to
2882 that, but I looked at the original tract and surveys and I thought that was the fact. However, I think roads would have to be constructed across there. In fact, I have a petition here for that very thing.

'Mr. Dodge: Are these additional roads included in the condemnation suit that was brought some time ago?

'Mr. Starbuck: They were not. As a matter of fact the petition I had filed in here asking
2883 for a cross road was made originally to meet this road which we thought at that time was a county road, but which court proceedings have proven not to be so, so we had that petition changed to read to tide water, intending to plan transportation from Santa Monica by boat. We had a petition signed by possibly representatives of fifteen thousand acres near the Malibu Creek.

2884 'Mr. Dodge: Are there any other parties present that would like to be heard?

'Mr. Scotten: Mr. Chairman, may I ask Mr. Starbuck a question? He stated there were about 15,000 acres represented on the petition. I ask him how many owners of land, how many actual settlers?

'Mr. Starbuck: I think as to owners of land, somewhere about 85 or 90. I wouldn't say ac-
2885 tual settlers. I say actual owners.

'Mr. Scotten: What was the estimated cost of that five miles of road?

'Mr. Starbuck: The preliminary proceedings would have cost somewhere about a thousand dollars. That is all we asked for in that petition, intending to form a road improvement district and create the road by private money with possibly some help by the board.

'Mr. Scotten: How much was the cost of the
2886 road estimated at? I understand such an estimate was made.

'Mr. Starbuck: That is a private matter. That don't enter into this at all, as we did not ask the board at that time for anything more than a preliminary survey.

'Mr. Anderson: A road district would largely embrace this Malibu Ranch?

'Mr. Starbuck: Yes, we intend to include a large part of it, yes sir.

2887 'Mr. Anderson: And yet it is a private matter as to what it would cost?

'Mr. Starbuck: Yes, so far; but I don't mind saying to the board it would be somewhere in the neighborhood of $90,000.

'Mr. Dodge: Was this estimate made by county engineers?

'Mr. Starbuck: Made by private engineers, one of whom is employed by the Southern California Edison Company.

2888 'Mr. Anderson: I might say, gentlemen, that that gives you some idea of what cross roads would cost this county.

'Mr. Starbuck: That is an entirely different proposition. Of the cross roads, this is probably the most difficult one that would be constructed. The Malibu Creek has very precipitous sides. It would have to be carried very close to the top of the canyon.'

2889 Mr. Anderson: I suppose you will stipulate that the petition related to Malibu canyon?

Mr. Burnell: Yes.

Mr. Anderson: Because that is a fact.

Mr. Burnell: No doubt of it. The petition of Mr. Starbuck was for a road through Malibu canyon.

Mr. Anderson: Yes.

A. 'A report was made about that by Mr. Fred Bowles, of the county surveyor's office and

states that preliminary survey would have cost about a thousand dollars, not to exceed that.

'Mr. Dodge: Anybody else.

'Mr. J. H. Crawford: I think it would be interesting to this board if they should just have a statement from one of the petition carriers in scattering this petition over the city of Los Angeles, and let them tell you what kind of a statement they made to the people that signed that petition. One of the statements made at our place by the lady that carried the petition was that Mrs. Rindge was perfectly willing for a road to go through there, but she wanted the state to put it through, for it would be a boulevard, and she was willing to give it to them if the people would sign this petition and kill this mud road proposition, then there would be a boulevard built through there later and another statement was there was nobody this would benefit and that the taxes would come off the people, that they were talking about and they would have to build the road and that it would not benefit anybody, and after the lady got through making her statement every one of them was called and I think she would admit right now because she admitted there, she never was down there, she lives on 36th place and after I talked with her I don't think she got another name. I told her that the statements in the petition itself were absolutely untrue and that

2893 the statement that she was making certainly were not facts at all and she said she certainly didn't know that, that she was only getting paid for carrying the petition and if she knew she was misstating the facts she would not make them and so far as I know she never got another name.

'Mr. Anderson: If the gentleman's statement is correct, if that is true as to those statements being made, we challenge any one that those
2894 statements are not true. Mrs. Rindge made every effort to get the Legislature to provide for a state highway through that ranch and there is no one that will be to any serious extent benefited compared with the cost of that road and moreover the road will come out of county funds in some way, shape or manner.

'Mr. Crawford: The same as every other road falls on the people.

2895 'Mr. Anderson: We don't build unnecessary roads.

'Mr. Crawford: We don't want to build any unnecessary roads and it is up to this board to say whether it is.

'Mr. Dodge: Mr. Crawford you suggested that some of the statements in this statement were untrue. Wi[illegible] statement is untrue?

'Mr. Crawford: I cannot just call to mind, but one statement was that it would not benefit anybody, that it would not benefit anybody at

2896 all. That is one of the statements, I cannot call that to mind just as they are read over, but I read it carefully after the lady handed it to me, but so far as I can see they are all misrepresentations.

'Mr. Dodge: Do you live up in that section?

'Mr. Crawford: No, I live here in Los Angeles, but I have 160 acres up in that section; we are interested of course, that the road be put
2897 through, but it is just laying there, we are paying taxes, but somebody else gets the grazing on it, I don't know who. It may have been the Rindges, it may have been somebody else.

'Mr. Dodge: Is there any location that a road could be built across the other side of the mountain that would accommodate your land?

'Mr. Crawford: I have been down in that country many times and the roads are bad; I have been over those roads and to go around
2898 by the automobile, as far as we could go, around by Calabasas, registers 42 miles from Los Angeles, around and down there as far as we could get, and the other way, down here, by the section line, we are six miles from Santa Monica, so there would be the difference if there was a road at all and that is a pretty bad way to make a road down in there, I think. We got in by being pulled with horses, pulled the same as other automobiles got in there and we stalled occasionally and they would help us out and we

2899 got up that canyon and got up another one and so forth. The roads are awfully bad; they could be made better, and it would help some; but finally the road would have to come the other way and everybody knows it. Mrs. Rindge knows it that sooner or later there will have to be a road through the Malibu and whether it is a state road or a county road or what it is it will be. There is no question
2900 about it.

'H. H. Manley: I want to say, for the benefit of you gentlemen and the people here, that my son and my wife and myself own some 400 acres directly back, I believe, directly north of the Rindge estate, and I think we are either adjoining, or within a half a mile of their property, in sections 24 and 25. I bought this property in good faith and went directly through the center of the Rindge Ranch to look at it. I
2901 didn't know at that time there was any difficulty or would be any difficulty in getting to the property and intended to develop it and make a home. We now live in San Francisco, or San Mateo. Admiring and having more pleasure in this climate than in the colder sections of the north, we intended to build on the property and develop it. It was not only a few days before we saw articles in the paper where the litigation was on and the roads were closed. We are in this position; the property is worth

2902 developing and we have paid the Government for the property and are anxious to develop it. It is impossible to get around the other way and get to our property. I attempted it some two years ago and after riding in an automobile all day and then taking a mule team and going over part of the mountain road, we got to within four or five miles of this property and found it was absolutely impossible to get there with a horse or any sort of beast, and we didn't
2903 get there on foot, and it lies directly back of the Rindge estate.

'Mr. Anderson: Is there a road to it through the Rindge estate?

'A. We could get to it from the Rindge property by either canyon, the names of the canyons I don't know.

'Mr. Anderson: But there is no road?

'Mr. Manley: My son's property runs down
2904 across the canyon directly this side of where your house is. We went through your property and on the other side and up the canyon.

'Mr. Anderson: Have you ever attempted to get up through Las Flores just east of you?

'Mr. Manley: I will say this for your information, that I was guided by a man named Campbell who was thoroughly familiar with the country and if there had been any possible way of getting to the property he would have no doubt taken it. I think the property is worth,

2905 in my opinion, developing, and it would be an asset to the county of Los Angeles and the city of Los Angeles if there should be a road put through there. I do believe, however, that the Rindge people are using a lot of their valuable land today by going directly through the center, of the good soil, and that a road could be built along the foot of the mountain and not use their valuable soil whatsoever, and then give a
2906 chance to each settler, in going through the property, and through the canyons and the mountains.

'Mr. Anderson: Have you ever investigated the advisability of getting a road out through Las Flores?

'Mr. Manley: I told you that I was not familiar with the names of the canyons but I know it is impossible to get to our property without going up the coast.

2907 'Mr. Anderson: Carbon Canyon is less than a mile inside of the Rindge property.

'Mr. Manley: No, it is something else—somebody else says, "Mr. Manley's property is between the Zuma Canyon and Las Trancas. It is absolutely inaccessible as he says anyway but up the Rindge road, and my property is in the same condition.

'Mr. Manley: I only know the locality by having gone there through the Rindge property, to first secure it and afterwards try to get to it

the other way and we were not able to. It seems to me that the Rindge people would be delighted to have a road put through the property, and it seems to me that if they want to conserve their soil they would consent to it going along the foot of the mountain where it would be just as good for public travel and not use any of their valuable land. I am not familiar with the condemnation proceedings or whether they have been started or may not be started, and where they want the road to go, but I should say it would be along the foot of the mountain where it would answer the purpose at the present time.' Somebody said,—he talked about the number of settlers there, 'there may be a few settlers, but there would be many because it certainly is habitable land and it would be desirable to live in, but unless we can get through, it would not be, and I truly hope you gentlemen understand the situation thoroughly, as I believe you all do. I don't believe in confiscating anything. I believe that the Rindge people should be paid for any loss they may be put to, by having the road through, but I do believe a road must go through and it should be done, and the earlier the better, and as far as that is concerned, I believe that a road way through there, that our Government would probably use it before very long, and it may be necessary for them to.

2911 'Mr. Anderson: The Government would not like a coast road on account of it being accessible from the ocean.

'Mr. Kincaid: My land lies right next to Mr. Manley's and many things that have been said here are exactly true, and some of them a little exaggerated. To get to my land I have to go fourteen miles further than by the coast road. There has been an automobile to my door by
2912 the coast road. The other way, I have 14 miles to go, practically straight up and down. I was up there a few days ago and it takes a day to go. You can hardly put a road in that way, if it would, it would cost so much it would be impossible to build it, for me at least, and the same condition exists in nearly all this country. A road through the back way might serve a few people, in some localities, such as the Decker road, but there is a stretch of 20
2913 miles of country, and there are canyons running down through this property to the beach all along every two or three miles, and the people have property all along back of this property. The reason that you have to have a road on the mountain for a distance of some 20 miles, or make numerous roads from this Ventura road, 10 or 12 miles back in. The ranch is only two or three miles wide and it seems to me that it would be better to reach these people from the coast way.

'Mrs. Rindge: Mr. Kincaid is a friend of the Decker's and Mr. Haas is a friend of the Decker's. When we bought the ranch we bought the Haas and the Deckers and the Kincaids with it. Ever since that we have had trouble with them. Mr. Kincaid has property up there. He and his people own about 2,000 acres. Mr. Carl Haas's property is right in the center. Mr. Carl Haas told my son, who was up there surveying—before I leave the subject, I want to say there is a road that goes to this man's place, within a quarter of a mile of the house. Their manager told my manager a few days ago that anyone could pitch a tent on their land. This man we have always had with us. He was with us in the Federal case and the other case. Mr. Walter Haas was before the board of supervisors when my husband first came before the board of supervisors in the first place. We have always had these people at our heels, dogging, molesting, harassing, and doing everything they can do to upset the running of our ranch. We have had all sorts of things laid at their door, which of course I cannot say, because I would have a suit for libel. We have always had this crowd doing all they can. They have about 2000 acres. Mr. Carl Haas has some and Mr. Walter Haas was against us in the beginning. We thought we were through with the Haas's when Mr. Haas resigned as

2917 assistant county counsel, but I received a letter from him the other day as special county counsel. He is already primed and fitted for the job of condemnation at a good fat fee of $50 a day, as Mr. Haas had it through the Federal and state litigation which we had. And now they have this man primed for the condemnation, through the Malibu Ranch, as special counsel for the board of supervisors, and it
2918 seems to me that the taxpayers ought to have something to say about it, and I think it is time that the Haas's went to the bad and get some new blood, to fight a widow and her children, who own the Malibu Ranch. Charley Decker has a school house and I believe it is all due to Carl Haas and these people are always putting them up to things. They would not permit that, if there wasn't this man here in this office aiding and abetting them, in inter-
2919 fering with our running of the ranch and trying to make it impossible for us to carry on the business we are carrying on now. We have grown this year 1600 sacks barley and we have 1200 head of cattle on the ranch. We did have 2272 head of sheep, until the anthrax was started in there by a German, and now we have about twelve to fifteen hundred left out of that lot. We have about 150 head of the finest ranch horses in the state. We have 500 pigs. We have raised 4,000 pounds of beans. Is it

right that this business should suffer for the sake of a few settlers? It does not seem any man of business would allow it to be done. It is good property, doing good work and it is an object lesson for all of those people. Mr. Haas and Mr. Decker simply have been after us on this road, have all said, 'Starving settlers.' If the people want to go up there and starve, it is not my fault. They cannot expect to go on a mountain crag and cultivate a quarter of an acre of cabbage patch, and expect that I can go in there and provide for them. Let them come down and sub-divide my property and take what they want? Two of those persons went through. Mr. Blank and Mr. Houston. They came down from Ventura county. I had a friend with me on the beach picnicing one Sunday. They went through the ranch. They had nothing but a mattress. They stayed in a canyon where our finest cattle were on the barley stubble. Now, I said, "We will notice what those people take out the next day." They took out a load, half of a covered wagon, the wagon box was covered with canvas and half full. Can the Malibu Ranch afford it? It cannot. It stood the depredations of those years, ten years, when we hoped that they would be put out of this ranch. We stood it—although they took 200 pigs from our ranch—and then I have a blank—they took 43 sacks of barley off

my ranch at night and they done all sorts of things. There is smuggling going on through my ranch. These people up there must know it. I knew it. We paid no attention to it because they have burned us off so much we thought the best thing to do would be to keep quiet. That was Uncle Sam's business. And now it seems strange that the Malibu Ranch with its long frontage on the ocean would have to suffer with these people who have a natural way from Topango up through the center, which would give them a fine road through the center, and they have outlets to all that property.

'Mr. Kincaid: I rather take exception to being told there is a road within a quarter of a mile of my place. I want to say that I have been going to this country long before Mr. and Mrs. Rindge owned the ranch. I had a ranch there some twelve years myself, and there is no road, not only within a quarter of a mile of my place but nothing nearer than the road which Mr. McClellan knows is being worked upon now, to the Decker place, which is several miles away and part of that is still a trail. With regard to the smuggling I want to say that the Government attempted once to establish a light-house and a place to look out for this thing on Dume Point, 13 acres—you remember the proceeding—and the award was so high the Government would not accept it. If Mrs. Rindge

2926 was so desirous to keep the smugglers out why didn't she help the Government to establish this lighthouse and do something for the people. It does not appear that she wants to do that. This road she speaks of, put through the heart of the mountains, if you would see it once you would know it would be impossible. One peak to another. Up and down canyons. It would be impossible. You cannot do it. It would be
2927 impossible to make a road running parallel with the coast road, and furnish ingress and egress to all these people. Now there are several other things she has said. There is the implication that we are all related. I want to say for her information there is nothing in that, and I am not related to any of those people that she accuses me of being related to. I am friends to them and have been for many years. My folks have been here since 1872 in this old
2928 pueblo of Los Angeles and I can say I have been at times through this ranch. I have even gone with Mr. Rindge through this property and I have been on it with Mr. Kellar, when he owned it, and when Mr. Kellar owned it it was an open way. At one time old man Keller even deeded this property, but through some fault with the metes and bounds they were not settled and the Government decided it was no way. Now you can get all the roads through the back country you desire, but you cannot

reach all these people unless you are willing to spend several times the amount which it would take to make the coast road. It is the natural way. There will have to be some roads through the canyons. For instance, the canyons which would supply me with a road would supply Mrs. Decker with a road and Mr. Manley with a road. There are three or four—and probably two or three canyons would have to be—but remember these roads would be only a short distance. My house is one mile from the ocean. One mile through Mrs. Rindge's place. The next one would be not more than two miles and the other way we are twelve or fourteen miles from the highway. Now as for building a road fourteen miles and trying to jump up and down those canyons it is impossible. Any engineer will tell you that it is not feasible and it would not be doing the taxpayers, in whom she seems to be so thoroughly interested, it would not be doing them justice to spend money on this mountain road. It would be shorter to Ventura by five miles than any other way, and if Ventura will come in, and I will say I believe they will, it will be one of the best and most beautiful and useful of roads because it will shorten the distance and be of much benefit to the people of the county. I have been going around to the different people to find out their sentiments and I think that in four hundred people there were

only four that opposed to this road and one of them was in hopes of some day getting a job from Mrs. Rindge lathing a house that she expected to build and another one was in the bank where she banked and although he is a dear friend of mine he says, 'I believe the road—I believe in the road, but I cannot do it' and one other, as I recollect, would not sign anything unless he knew exactly what it was. But that is about the percentage that I found opposed to this road and I approached some of the biggest taxpayers in this county. I won't mention any names but there are plenty of them, some of them pay more than Mrs. Rindge in taxes and they are in favor of the road and you will find as you go through the county the universal opinion is "Let them have the road." It should have been done years ago, I went to Compton in regard to this petition. It was spread around there that Compton people are awful—are up in arms. My brother lives there. They wanted to sign a protest against the way it was put through. They thought they were signing for a road and my brother told me to take a protest down there and I could get a great many people to sign. Also down in the Green Meadow District, it was sent to the school house and the school teacher signed it. That is the kind of representation we have.

2935 'Mr. Anderson: I suppose Mr. Kincaid's information is more or less in the shape of hearsay and so far as that is concerned, people desiring to protest this petition should have been presented this morning and not merely represented by hearsay. However, as far as the road to the back section, and as far as that is concerned, I think that the little document I have in my hand which contains Judge Bean's
2936 decision with regard to the investigation made in the Federal case is of a good deal more benefit and value to you, than any statement of any of the interested parties and I will leave this for you and I think you will find it very instructive on the question of roads up the mountain and to the north.

'Mr. A. W. Burke: I would like to say a few things. I know the conditions up there for several months. Mrs. Rindge's statement a few
2937 moments ago about depredations I think they are very much exaggerated. I don't know of any demonstration of that kind being made. I will say, however, her riders have run her sheep over land, cut down fences and dynamited roads and I think that is pretty dirty work myself. There is some mighty good land up there. You cannot see it from the ocean or the state highway, but after you get in the mountains you can see it. It is farming land and it can be made valuable ranches if there is some way

of getting our products in and out. At the present, there is no way of getting them out and if we cannot get ingress and egress, it would be useless and a loss of money and a waste of time. If we could get the crops out we could make a good living. As it is we have to live from hand to mouth because Mrs. Rindge wants to get it all. Now concerning the topography of this country, I have walked over it. That is the only way you can get over it. In building a road in from the state highway it would cost more money than building the coast road. Up and down, up and down. It would cost lots of money now, although I will say that the coast road will not benefit us until some lateral roads were built, but that would be one step in opening the country and when that country is opened there will be ranches and summer homes and country clubs and a great settlement up there I predict.

'Mr. Carl Haas: Mr. Chairman, as you know I am counsel for the county in this road matter. I did not intend, when I came here, to say a word, but my name has b brought up by Mrs. Rindge and I am very . ry for it. I have always entertained the kindliest feeling for Mrs. Rindge and for her sons. I have a half interest in 80 acres that is absolutely precipitous, that cannot be used for any purpose except for grazing. It is in no way accommodated or would be

accommodated by this road—in no way whatsoever. So that clears up a little point in regard to the little 40 acre tract I have up there. Furthermore, in regards to my relations with the people, I want to say I was raised in Los Angeles; that I used to go to school with a number of these people that live up there; they are friends of mine. I visit them occasionally, and I have at all times asked them to be patient, that some time they would get the road. I have warned them against any kind of depredations upon the property of the Rindges, advised them not to cut the fences, advised them to keep at peace with the Rindge employees. I know if anything, anything that I have done, Mrs. Rindge, is more good than any one man that goes into those mountains, and I believe her sons would so testify.

'In regard to the condemnation suit. I would like to say this, that I believe if Mrs. Rindge would take this thing in an unimpassioned way and we could get together on some basis, it would be to the best interest of the county of Los Angeles if the condemnation suit could be dismissed and a road put through there with Mrs. Rindge's consent, and I believe Mrs. Rindge would profit by turning over the road she has through her property and is using at the present time, and the county pay her for the road work that has been done on that road,

because I know it will take a long while before the condemnation proceedings are finished, and it would take a longer while before the road was built that would have to be built over the strip of land taken by the proceedings, and I should advise Mrs. Rindge's attorney, being present, that we get together and see whether we cannot settle this road matter out of court to the profit of Mrs. Rindge and to the profit of the people of the county of Los Angeles. And I want to state that at no time have I ever set my foot down and insisted upon proceedings in court, but it seemed like as a last resort we had to proceed in the condemnation proceedings. If there is any method, I would be glad to lend my assistance to it.

'Mrs. Rindge: I just want to say one thing. When they had the surveyors up there two years ago at a cost to the county of about $10,000 Mr. Carl Haas was up there with my son, and he said, "Now, if you will give me a road to my place, I will put this road through your ranch where you want it," and he says, "If you don't, I will put it where it will do the most harm." Then he goes through the Gates Ranch'—

I have a blank space there. Is that the Gates? I didn't keep up with Mrs. Rindge, she spoke so fast.

'He made a beautiful curve to take in all the land of the Malibu Ranch he can. He goes up there through the mountains and canyons to make a road just as far as he can. He goes through our water system at Zuma, goes where the steel pipe crosses the river. By going 10 feet farther the other side of the bank he could have avoided a cement system. He did not do that. He took the cement system right along. Then he was not content with that. He goes up to Lachusa; he cuts through the alfalfa patch there where he could have gone at the foot of the mountain, destroying as much as he could all the way along; and then he goes through the last sheep corral for his survey, and then gets to the Ventura county line.

'Mr. Haas: Mrs. Rindge, I simply want to state that whoever informed you of that told you an absolute untruth.

'Mrs. Rindge: My son told me.

'Mr. Haas: I never once stated I cared about the road going near my property. I told him the road was over the mountains.'

Then I left out something.

'And as far as the line I had nothing to do with the survey. The surveyor was alone. He set the line and I paid no attention to the line, and as far as the line was concerned, Mr. Hinshaw, the supervisor at that time, went with the surveyor and I was not present at that time,

and they set the lines without my knowing where the lines were going, and I knew nothing of where the lines were going until the map was submitted to me by the surveyor.

'Mrs. Rindge: This is a long controversy. This fight has been going on ever since we have owned the land, the people trying to force a road through there, and they have cost the taxpayers of this county an endless amount of money. The litigation that has been on the Malibu Ranch must have cost this county and state and Federal Government from a hundred to two hundred thousand dollars. They could have paved roads out to the state highway for that and not molested the food producers.

'Mr. Kincaid: Ladies and gentlemen, that same question about the cost of this road might be stated in regard to Broadway here—the same proposition. Mrs. Rindge is interested in that same thing. Everything costs that is worth while. If it is not worth while let us not have it. If it is, let us pay the cost. And that is exactly the proposition. The people of Broadway are going on. Just take the beach alone. Twenty-five or thirty miles of the prettiest beach in California, with the waves breaking on it, and not a soul to look upon it. Does that beach belong to Mrs. Rindge also? Does she own three miles of sea also, or does the beach belong to the people of Los Angeles county? How can they

reach it? There is no way without this road. Certainly they ought to have a right to look upon some of the beauties of nature. You go this side of the Malibu Ranch and you find them all along the beach. They cannot reach that.

'Mrs. Rindge: As long as we own the Malibu Ranch I don't think it is any business of Mr. Kincaid's what we do with the property.

'Mr. Kincaid: Excuse me; I am not kicking about her property; I am kicking about the county's property.

'Mr. Sachs: Now, gentlemen, I happen to be here just by accident, and not directly interested in the ranchers at all. I went to see a man by the name of Haskell and this is what I found out: I found the road was closed. It seemed there was not a single soul there that I met that would say anything good, either in regard to the closing up of the road or in defending Mrs. Rindge or any of her actions—there was not a soul there. I am not interested in any way whatever. The question is, there are a few ranchers,—a few of them have moved out already and the others I suppose will have to. Mrs. Rindge will force them to. There is no other way for them to get along there. They have spent their last penny and they have to leave there because Mrs. Rindge don't want to lose some of her money. Is it right for the amount of money Mrs. Rindge may be the loser

every year that these ranchers should have to give up their last penny, and were given this land by the Government the same as Mrs. Rindge was given hers by the Government, and because she has such an enormous quantity is it right these people must give up their small ranch because she don't want to lose any part of it? The conversation I had with one man that told me—I believe he was an officer—he said that the only thing for the people to do down there would be a plain simple thing, to go up to some—"

I have a blank space then.

"—and get a good six-shooter and give it to her. They come down there and spend four or five years and give their time and labor and every penny and are obliged now to desert it. I don't believe a jury would convict any man who did it. If you gentlemen decide you want a county road down there you would have the right of condemnation, and give her a fair and reasonable amount of money. Why should she expect either an enormous amount of money or expect all those ranchers to give their little ranches up to her. Is it right? What reason has she got but money rights in this case? She cannot talk from a patriotic standpoint. She is not contributing anything to the Government by her getting any more of the food there. The little that she gets would not be a direct con-

2959 tribution to the Government. It is simply a money matter with her, and with these poor devils it is a question of life and death. There was one that had to walk—begged me to take him in the machine and bring him down to Ocean Park. He walked with his wife and a baby, and there are neighbors there that would testify to it. It is only reasonable that something will have to be done for those people. I 2960 don't know where it will have to be cut through, but something must be done, and I believe Mrs. Rindge will surely forego some of her profits. I am not interested in any way at all in those places.

'Mr. Dodge: I hope there will be no desire on the part of anybody to take the laws in his own hands. The laws are made to be obeyed in this country.

'Mrs. Rindge: This is not the first time I 2961 have been threatened.

'Mr. Anderson: I think the last speaker will indicate to some extent the lawless character of some of those people at least.'

Then somebody said—I don't know who was speaking—'I don't think that is fair at all. He says he is not interested in that property. Any of those people that own property up there, you don't hear them saying they will do any bodily harm to Mrs. Rindge.

'Mrs. Rindge: I have been threatened many times since the Federal trial.

'Mr. Sachs: I do not say they would do it, but I said there was not a jury in this county that would convict a man, and I believe so, too.

'Mr. Crawford: That is not the question. That question is foreign to us. People that are asking for some relief up there—we are not talking about doing Mrs. Rindge bodily harm or injuring her property; but Mrs. Rindge don't hesitate to let her stock graze every foot of land up there that they can get over, and she knows it, that they graze on that land.

'Mrs. Rindge: If they cut my fences, how can I keep my cattle in?'

Then someone answers: 'It is easy for her to cut her own fences and lay it on to somebody else. I don't know who cut them. It is easy for her to cut her fences. Why would I cut her fences and let her stock on my land? It would not be fair to say I would cut her fences and let stock on my ranch; it would appeal more to your judgment that her people would cut her fences and let her stock on my land.

'Supervisor Woodley: Mr. Chairman, I move that this matter be taken under advisement."

Then I have a few remarks by Mr. Ostrom, but they are kind of crazy.

Mr. Anderson: Of Mr. Who?

A. Mr. Ostrom.